



[2017] UKFTT 0714 (PC)

**PROPERTY CHAMBER  
FIRST-TIER TRIBUNAL  
LAND REGISTRATION DIVISION**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

**LAND REGISTRATION ACT 2002**

**REF NOS: 2016/0927**

**BETWEEN**

**Arrow Global Guernsey Limited**

**Applicant**

**and**

**Daniel Kazibwe (1)**

**and**

**Loi Angela Kitamirike (2)**

**Respondents**

**Property address: 246 Carlton Avenue, Westcliff-on-Sea SS0 0PX  
Title number: EX303884**

**Before: Judge John Hewitt  
Sitting at: Alfred Place London WC1E 7LR  
On: Friday 15 September 2017**

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**ORDER**

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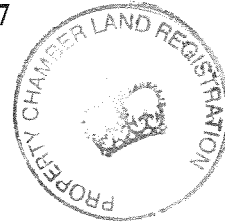
**It Is Ordered that:**

1. The Chief Land Registrar shall give effect to the original application made 26 August 2015 to enter a restriction on the register as if the objection of the first respondent, Mr Kazibwe had not been made;
2. The first respondent shall pay the costs of the applicant reasonably and properly incurred since 7 November when the disputed application was referred to the tribunal;
3. The said costs shall be assessed on the standard basis and shall be assessed summarily;
4. The said costs shall be assessed in the sum of £1,812.00; and
5. The first respondent shall by **5pm Friday 27 October 2017** pay to the applicant the said sum of £1,812.00.

**Dated this 22 September 2017**

*John Hewitt*

**By Order of the Tribunal**





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**DECISION**

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**Representation:**

Applicant:	Mr Chris Green	Counsel
First Respondent:	Mr Kazibwe	In Person
Second Respondent:	None	

*KEYWORDS – Restriction – charging order – beneficial interest of co-registered proprietor – transfer of beneficial interest*

### **Cases referred to**

*Commercial First Business Limited v Choudhry & others* (27 July 2012) (Mr Owen Rhys Deputy Adjudicator to HM Land Registry) ( Case Refs: 2011/0713/0714/0715/0716)

*Arrow Global Guernsey Limited v Jacomb & anor* (6 June 2017) (Judge Elizabeth Cooke sitting in the First-tier Tribunal (Property Chamber) (Land Registration Division) (Case Ref: 2016/0536)

### **The issue before the tribunal and its decision**

1. The issue before the tribunal is whether the applicant is entitled to enter a restriction on the title in respect of the beneficial interest in the property vested in the second respondent (Ms Kitamirike) to protect a charging order it has obtained in respect of the interest. This arises because the first respondent (Mr Kazibwe) asserts that Ms Kitamirike no longer has a beneficial interest in the property, she having transferred her interest to him informally.
2. The decision of the tribunal is that:
  - 2.1 The Chief Land Registrar shall give effect to the original application made 26 August 2015 as if the objection of Mr Kazibwe had not been made; and
  - 2.2 A costs order shall be made in favour of the applicant. The costs shall be assessed on the standard basis, the costs shall be assessed summarily in the sum of £1,812.00 and that Mr Kazibwe shall by **5pm Friday 27 October 2017** pay to the applicant the said sum of £1,812.00

### **Background**

3. The basic facts and law were not in dispute and may be summarised as follows:
  - 3.1 Mr Kazibwe and Ms Kitamirike were in a relationship and jointly purchased the property with the benefit of a mortgage loan and were duly registered at Land Registry as beneficial joint tenants.
  - 3.2 Unfortunately the relationship did not prosper that the parties split up in 2006.
  - 3.3 In a letter dated 22 January 2007 [3] sent by Ms Kitamirike to Mr Kazibwe and in a letter dated 5 July 2007 [4] sent by Ms Kitamirike's solicitors to Mr Kazibwe, proposals were put forward by which the parties might regularise ownership of the subject property plus a timeshare in Spain which was also jointly owned, but no formal agreement was arrived at.
  - 3.4 As a result of the July 2007 letter Mr Kazibwe and Ms Kitamirike met alone, decided not to bother with lawyers and agreed that Mr Kazibwe should have sole ownership of 246 Carlton Road and be solely responsible for the

outstanding mortgage payments on that property and that Ms Kitamirike should have sole ownership of the Spanish timeshare.

- 3.5 At that time Mr Kazibwe had a poor credit record and the view was taken that the mortgage lender would be unlikely to agree to a transfer of the property and the mortgage into Mr Kazibwe's sole name and so no steps were taken to try and achieve that outcome.
- 3.6 In May 2008 the parties jointly approached Abbey to make changes to the repayment method of the loans which were charged on the property and which at that time stood as follows:
1. £107,065 Loan on original joint purchase;
  2. £ 21,944 Additional loan to pay off a debt Ms Katamirike had on a property in Leeds; and
  3. £ 42,450 Additional loan taken out to pay for timeshare purchased fully paid.

Since that time Mr Kazibwe has personally paid the mortgage instalments in full and he and Ms Kitamirike have gone their separate ways. Mr Kazibwe has since married and he and his wife have a daughter.

- 3.7 In 2013 the applicant obtained a money judgment against Ms Kitamirike. By August 2015 the amount due under the judgment plus interest and costs stood at £5,922.53. On 25 August 2015 the applicant obtained an interim charging order on Ms Kitamirike's beneficial interest in the property [11].
- 3.8 Mr Kazibwe said he received notice of the interim charging order and the hearing date of 12 October 2015. He said he wrote to the court in September 2015 informing it of the position but he did not attend the hearing on 12 October 2015 because he did not think he had to; he thought writing was sufficient.
- 3.9 The interim charging order was made final on 12 October 2015 [12].
- 3.10 Evidently Mr Kazibwe has taken advice because in discussion he readily accepted the arrangement made with Ms Kitamirike was not in writing and thus not sufficient to formally transfer Ms Kitamirike's interest to him. He said that he made numerous efforts to get Ms Kitamirike to sign relevant documents but has not, to date, been successful. In these circumstances Mr Kazibwe accepted that Ms Kitamirike still has an interest in the property and that the applicant is entitled to enter a restriction on the title. To use his words: "*I accept I did not do it right. I have the debt and probably costs as well.*"

#### **Reasons for Decision**

4. Mr Kazibwe did not make a formal application to the court compliant with CPR73.8 objecting to the charging order. He is thus bound by it unless he can have it set aside. This tribunal cannot go behind a regular order of the court.

5. There has been no written transfer of Ms Kitamirike's interest compliant with Section 2 Law of Property (Miscellaneous Provisions) Act 1989.
6. In the light of the above I have made an order requiring the Chief Land Registrar to give effect to the application as if the objection of Mr Kazibwe had not been made.

**Costs**

7. Mr Green submitted a schedule of costs in the modest sum of £1,812, to include the costs of the hearing. In summary the costs were made up as to:

Solicitors costs (based on a charge-out rate of £120)	£ 960.00
Counsel's fees	<u>£ 550.00</u>
	£1,510.00
VAT @ 20%	<u>£ 302.00</u>
<b>Total</b>	<b>£1,812.00</b>

8. No objections were taken to the charge-out rate, the time claimed or the amount of counsel's fees. All of those I find to be reasonable in amount and reasonably incurred.
9. Mr Kazibwe's case was that he accepts he will have to pay off the debt. He has tried, unsuccessfully as yet, to agree an instalment plan with the applicant, and he considers it unfair he should be saddled with the costs as well. Mr Kazibwe said that in the past he has had financial difficulties, he has had an IVA, he is now getting back on his feet, but there is only so much he can take on.
10. I do have sympathy with Mr Kazibwe. I recognise he is in a difficult position made worse by Ms Kitamirike's lack of co-operation. Nevertheless he has persisted with an objection to the application right up to the hearing, even though he has taken and accepted advice as to the hopelessness of his case. In this tribunal, as in the civil courts, costs follow the event save in exceptional circumstances. I find that no such circumstances have been brought to my attention.
11. Accordingly, I have made a costs order in favour of the applicant. The costs claimed were modest and, in my judgment, very reasonable in amount. No objections were taken as to the amount. I have therefore assessed costs at £1,812 as claimed. I have specified a reasonably long period for payment in the hope that the parties will be able to agree an instalment plan.

**Dated this 22 September 2017**

*John Hewitt*

**By Order of the Tribunal**

