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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

CIVIL SUIT NO. 01 OF 2023

AJOK PATRICIA:..... PLAINTIFF

VERSUS

10 **JAMSINE PRECIOUS MUWANGUZI:.....DEFENDANT**

BEFORE: HON. MR. JUSTICE GEORGE OKELLO

JUDGMENT

15 **Background facts**

The Plaintiff who has been found by this court in another proceeding at the High Court Family Division, Kampala (E. Kabanda, J.) to be the widow of the late Hilberer Wolfgang Alexander Johannes, a German National who died on 10 September, 2022, commenced the process of petitioning this court for grant of letters of administration in respect of the deceased's estate but she was resisted by the Defendant who lodged a caveat. In her affidavit supporting the caveat, the Defendant claimed to be the rightful widow of the deceased. The present suit commenced by Plaintiff drawn by Conrad Oroya and Co. Advocates, for the Plaintiff, apparently, is principally for removal of the caveat, and for orders that letters of administration be granted to the Plaintiff. The Plaintiff of course purports to seek for a host of other reliefs, which, with respect, cannot be

H. M. O. Okello

5 properly considered in the present adjudication but at any rate, some appear to
have been settled by the decision of this court quoted above while others would
call for distinct proceedings which at present court is unaware of. The Plaintiff
for example makes prayers that the impugned Will and Marriage Certificate being
relied on by the Defendant, to support her claims, be annulled. She also prays
10 that an eviction order issues ejecting the Defendant from the "estate" and that
general damages be awarded and a permanent injunction issues restraining the
Defendant from interfering with the Plaintiff's estate "administration". With great
respect, the Plaintiff appears to be placing the cart before the horse, because,
the contested process of seeking for authority to administer an intestate estate,
15 has not yet been determined by this court, not until this Judgment. Some of the
prayers the Plaintiff purports to make can only be made by an administratrix of
an estate, in a proper proceeding, if at all.

In the suit instant, the gravamen of the Plaintiff's claim for removal of the caveat
20 appears to be that, the Defendant has never been married to the deceased. It is
alleged she was a mere house maid who had been accepted by the Plaintiff to live
at the Plaintiff's and the deceased's 'matrimonial' home while the Plaintiff
pursued Doctoral Studies abroad. The Plaintiff further contends, she supported
the Defendant's education and paid her tuition for a Diploma course at an
25 institute in Entebbe while the Defendant lived with the Plaintiff's family within
Seguku, Entebbe Road. The Plaintiff thus avers that, having since been declared
by this Court to be the only widow of the deceased, and having been allowed to

5 bury the deceased which she successfully did, the Defendant had no basis for
stopping the Plaintiff from processing letters of administration.

In her Defence lodged by her then advocates, Kasadha and Partners Advocates,
the Defendant denies that the Plaintiff is a widow of the deceased Wolfgang. She
10 asserts that she is the only lawful widow of the deceased and at the time of his
death, the two lived as a couple. She impugns the Ruling of this Court and
asserts that, in any case, she has appealed to the next court. The Defendant
makes other averments which I have found are not material for the purposes of
resolving the issues at hand, which I shall set out shortly. The Defendant prayed
15 that the suit be dismissed with costs. In her reply, the Plaintiff denied the
Defence averments, reiterating hers.

Representation

At the hearing, Mr. Okot Douglas Odyek and Ms. Naiga Zakia, learned counsel,
20 jointly appeared for the Plaintiff. No counsel appeared for the Defendant.
Kasadha and Partners Advocates were served with the hearing Notice as proved
by an affidavit of service but they indicated that they had no further instructions
in the matter. The Deputy Registrar of this Court then ordered for substituted
service of the hearing notice on the Defendant through the Daily Monitor News
25 Paper of 12th January, 2024 at page 40. The Defendant did not appear at the
scheduled hearing after the substituted service. Thus, the case proceeded ex
parte, under O. 9 rule 20 (1) (a) of the Civil Procedure Rules.

Issues

Two issues were proposed for the Plaintiff which court adopted, namely;

1. Whether there is sufficient ground for lifting of the caveat lodged by
the Defendant against the Plaintiff's petition for letters of administration?

2. What remedies are available to the parties?

The proceedings

The Plaintiff filed her witness statement and that by one Opiyo Samuel. The Plaintiff was thus PW1, and Opiyo Samuel testified as PW2. Both statements were admitted as their evidence in chief. Several documents were tendered in evidence and marked as Plaintiff's exhibits. The exhibits were slightly over 23 in number. I shall only refer to relevant exhibits, in my analysis.

Resolution of the issues**Whether grounds exist for removal of caveat**

The term "caveat" is not defined in the Succession Act Cap 162 as amended by the Succession (Amendment) Act 2022 but courts have adopted the Dictionary meaning. Thus according to Black's Law Dictionary, 4 Ed. at p. 281, a caveat is a Latin phrase meaning "**let him beware**". It is a warning or provision. It is an

5 intimation to a Judge or other officer, notifying him to suspend a proceeding
until the merits of the caveat are determined. This definition was adopted by my
learned sister, Faridah. S Bukirwa, J., in ***The Administration Cause No. 80 of
2022: In the Matter of the Estate of the Late Baatakan Ayazika Yokusani
Azimavesi Akuboota (deceased), an Application for Probate by Steven John
10 Waidhuba & another.***

The legal regime for the lodgment of the caveat has since been improved, since
10 April, 2022, vide the Amendment to the Succession Act which was assented
to by H.E The President of the Republic of Uganda, Yoweri Kaguta Museveni.
15 Whereas the provisions of Section 253 of the Act which provides for lodgment of
caveat against the grant of probate or administration, and section 254 which
prescribes the Form of a Caveat have not been affected by the 2022 amendment
to the Succession Act, section 255 of the Act was overhauled by the Legislature.
Previously, no suit could be filed until a mandatory statutory notice was given to
20 the caveator by the person intending to sue for its removal. The caveator would
be notified that a suit is to be lodged against him/her, should he/she fail or
refuse to remove the caveat. Courts have thus held that the (then) requirement
of section 255 of the Succession Act Cap 162 and its earlier equivalents, was
mandatory. Courts, therefore, were obliged to strictly enforce it. See: ***Misc.
25 Application No. 252 of 2014: In the Matter of the Estate of the Late Justin
David Kirunda (a decision by Percy Night Tuhaise, J., (as she then was);***

5 ***Namungo Vs. Kiryankusa [1980] HCB 66; Margret Kabahunguli Vs. Eliazali Tibekinga & another HCAC 08 of 1995.***

The current provision of section 255 of the Succession Act as amended and assented to on 10 April, 2022, which has completely replaced the old section
10 255, provides:

“S. 255 (1) A person who lodges a caveat under section 253 shall, within fourteen days of lodging the caveat, serve a copy of the caveat to the petitioner for probate or letters of administration.”

15
The above provision is not controversial, and it seems to me, on the evidence, the Defendant served the Plaintiff with a copy of the caveat or at least, the Plaintiff became aware of its existence, and that could explain why the proceedings for the grant of letters of administration before this court stalled. It
20 also explains why the instant suit was lodged by the Plaintiff, for removal of the caveat.

Subsection (2) of section 255 of the Succession Act states;

**“Where a caveat is lodged in respect of a petition for probate or letters of
25 administration, court shall suspend the proceedings in the matter until the caveat has been withdrawn, lapsed or a suit for the removal of the caveat has been filed and determined by court.”**

5

This court suspended the process of proceedings for grant of letters of administration, in compliance with the forgoing provision of section 255 (2) of the Succession Act (as amended).

10 As I shall demonstrate shortly, apart from the above fundamental changes in the legal regime of caveats in succession matters, there is also section 255A which provides for lapse of caveat and petition, provisions I shall consider herein below. I should, however, observe that, the then mandatory notice of an intended suit for caveat removal, has been done away with by the legislature in the amendment
15 to the Succession Act, from 10 April 2022. Thus to the extent that judicial decisions have interpreted the requirement for mandatory notice under section 255 of the Succession Act Cap 162, or its past equivalents, those judicial decisions cited, in my respectful view, to that limited extent, would no longer apply.

20

I thus note that in the instant case, learned counsel for the Plaintiff put strenuous effort, quite unnecessarily, to argue about the mandatory requirement for giving notice by the Plaintiff, before a suit could be launched. I think, with respect, learned counsel is oblivious of the change in the legal regime of caveats
25 in succession matters. I have, therefore, ignored part of learned counsel's arguments respecting the need for mandatory notice before a suit for the removal of caveat is launched.

5

In further resolving the controversy at hand, I have found the provision of section 255A of the Succession Act (as amended), quite pertinent. It reads:

10 **“S. 255A (1) A petitioner for probate or letters of administration in respect
of which a caveat has been lodged shall, within six months from the date
the caveat was lodged, file a suit for removal of the caveat”**

Pausing for the moment, I note that the Plaintiff lodged a petition for letters of administration vide Administration Cause No. 89 of 2022 on 12 December, 2022
15 (PEX 19). The caveat was thereafter lodged by the Defendant on 27 December, 2022 (PEX 20). Although not expressly stated by the Plaintiff, it is apparent the Defendant got notice of presentation of the petition on the same being advertised in the local Newspaper with wide circulation. Thus the present suit challenging the caveat was lodged on 06 February, 2023, clearly well within the six months’
20 period from the date of the caveat lodgment (27 December, 2022), as required by the law. It is thus my opinion that the Plaintiff’s suit was lodged in compliance with the requirement of the provision of section 255A (1) of the Succession Act (as amended) which I find to be mandatory.

25 The other relevant legal provision in the resolution of the issue at hand is the provision of subsection (2) of section 255A of the Succession Act. It is enacted, thus:

5

“S. 255A (2) notwithstanding subsection (1), a person who lodges a caveat in respect of a petition for probate or letters of administration shall, within six months from the date the caveat was lodged, commence proceedings to prove the objections contained in the caveat.”

10

The above provision applies to a person who lodges a caveat. He/she is expected to sue the petitioner for grant of probate or letters of administration. He/she is expected to give the basis of his/her objections to the grant. Thus in the instant matter, by the referenced provision of the law, the Defendant was required, in
15 mandatory terms, notwithstanding the suit by the Plaintiff, to also commence proceedings to prove the objections contained in her caveat. I think the provision of section 255A (2) of the Succession Act is a fundamental change in the legal regime on caveats, among others, designed to deal with abuse of the legal process especially where caveators would lodge caveats not for good cause but simply to
20 frustrate the process leading to estate management. There appears to be many sad tales where caveators would sit back after lodging caveat. And as shall be seen with the provision of subsection (4) of section 255A of the Succession Act (as amended), the law curbs the abuse where a caveator could lodge one caveat after another has lapsed, multiple times, if only to frustrate the prospective
25 administrator/ administratrix of an estate from proceeding with the process of acquiring letters of probate/ administration.

5 Therefore, as seen from the provision of section 255A (2) of the Succession Act,
the amendment now implies that, a caveator is also required to sue to justify his
or her objections to the grant. It does not matter that the petitioner for letters of
probate or letters of administration has sued first. The suit by a caveator thus
enables him/her to prove the basis for his/her caveat, if any. The basis of the
10 caveat is proved via a suit and in no other way. In my opinion, I would thus think
that, where the petitioner has sued first for the removal of the caveat, a cross
action within the same suit by the caveator would be proper. This would avoid
multiplicity of suits between the same adversaries. It would also forestall the
need for consolidation of two separate suits. However, where separate suits are
15 lodged, that is, by the petitioner for removal of the caveat, and another suit by
the caveator for the purposes of justifying the caveat lodgment, it would still be
in order for a court to consolidate and determine the issues arising from the two
suits together, by a single judgment. That would also promote judicial economy
as the same Judge determines the competing claims. It would also inescapably
20 deal with the danger of plurality of decisions.

Thus turning back to the matter at hand, I have noted that, other than lodging
the caveat, the Defendant did not comply with the peremptory requirement of
section 255A (2) of the Succession Act (as amended). Having failed to prove the
25 basis of her objections in the caveat, the consequence is fatal. Under Subsection
(3) of section 255A of the Succession Act, the caveat lapses. For emphasis, I
reproduce the subsection verbatim.

5 It reads:

“S.255A (3) where a person who lodges a caveat or a petitioner for probate or letters of administration does not comply with subsection (1) or (2), the caveat and the petition for probate or letters of administration shall lapse.”

10

In this case, unlike the Defendant’s caveat, the Plaintiff’s petition for letters of administration is not affected and does not lapse since she lodged the instant suit for removal of the caveat, timeously. Had the petition not been lodged within six months from the date the caveat was lodged, the petition would have lapsed, meaning the Plaintiff (who is the petitioner for letters of administration) would have been required to lodge fresh petition. As for the Defendant’s caveat, the same cannot hold in perpetuity under the present law. Accordingly, the Defendant’s caveat has lapsed by operation of the law.

20 The above finding would be sufficient to dispose of issue one albeit not argued for the Plaintiff. However, I have further considered the grounds canvassed by the Plaintiff for the removal of the caveat. She adduced ample evidence that she is the only widow of the deceased Wolfgang. She strongly relies on the ruling of this court (Elizabeth Kabanda, J.) plus a host of other documents especially the marriage certificate of traditional marriage, issued by Ker Kwaro Acoli (PEX 4) and confirmation issued by the Acoli Paramount Chief, dated 20 May, 2016, showing that the Plaintiff married Mr. Wolfgang (now deceased) on 20 May 2016.

5 There is also PEX 3 which is a confirmation by the parents of the Plaintiff in
which they acknowledge receiving full bride price paid by Mr. Wolfgang. I have
perused the Ruling of my learned sister, Elizabeth Kabanda, J., given in HCT-
00-FD-MC-077-2022, consolidated with HCT-00-FD-MC-079-2022 between the
very parties to the present proceedings (PEX 15). The decision was rendered by
10 her Ladyship on 30 November, 2022. Whereas the proceedings in that case was
for determination of burial rights as between the two contestants, I note that
pieces of evidence adduced in the instant matter, were also adduced before the
court, to enable it determine who of the parties is a widow. This Court found
several major contradictions and inconsistencies in the claim of the present
15 Defendant. It agreed with the Plaintiff. At page 5-6 of its Ruling, this court found
that the Defendant failed to prove a valid customary marriage with the deceased
under the customary laws of Uganda. On the converse, court held that, the
Plaintiff was able to prove to its satisfaction and on the balance of probability
that, there was a valid customary marriage between her and Mr. Wolfgang, in
20 accordance with the Acholi Custom. I am of the same view, on the evidence
adduced before me. The marriage documents adduced by the Plaintiff is
overwhelming. However, the documents the Defendant relied on in the
mentioned proceedings before my sister Judge, copies of which the Plaintiff
adduced in the present proceedings, were found to have been forged. I hold the
25 same view. The Plaintiff was able to prove that no marriage happened between
the Defendant and Mr. Wolfgang. For example, whereas it was alleged that the
Defendant's purported customary marriage was registered at Kira Municipal

5 Council vide PEX 8, the same was denied by the officials of Kira Municipal
Council, during the proceedings before E. Kabanda, J. There was no entry in the
Register of Customary Marriages either. One of the signatures of the Municipal
Council Authorities, was found to have been forged. This is unlike the case of
the Plaintiff, where it was proved in court that, her marriage was registered at
10 the Uganda Registration Services Bureau. Be that as it may, I am of course
acutely aware that, the findings of this court per E. Kabanda, J., is said to have
been appealed to the Court of Appeal of Uganda. However, the plea of a purported
appeal was not proved by the Defendant as she did not testify in the instant
proceedings which proceeded ex parte. No copy of a Memorandum of Appeal was
15 adduced in evidence before me. Thus this court is unable to agree that there is
an appeal. A Memorandum of Appeal is what constitutes a civil appeal against a
ruling determining burial rights. Even if the Defendant had proved that she
appealed to the next court, I would have still found that an appeal per se without
its determination by the appellate court does not upset the High Court decision
20 until reversed. I am thus persuaded to follow the erudite decision of my sister
Judge on the similar matter. In the circumstances, I am, therefore, of the
considered opinion that, the basis of the Defendant's caveat, that is, the
proposition that she is the widow of the late Mr. Wolfgang, has not been proved
in this court. Therefore, I hold that there is sufficient ground for removal of the
25 caveat besides the statutory force of section 255A (3) of the Succession Act (as
amended) by which the caveat lapsed. The first issue is accordingly resolved in
the affirmative.

5 On the issue of remedies available to the parties, given my findings aforesaid, I hold that the Plaintiff is entitled to some reliefs claimed. Thus, I grant the following remedies;

- 10 1. It is hereby declared that the caveat lodged by Jasmine Precious Muwanguzi, the Defendant herein, objecting to the Plaintiff's petition for grant of letters of administration to the estate of the late Hilberer Wolfgang Alexander Johannes, dated 27 December, 2022 having lapsed, is hereby vacated.
- 15 2. The Defendant is hereby restrained from lodging another caveat in respect of the petition by the Plaintiff for grant of letters of administration to the estate of the late Hilberer Wolfgang Alexander Johannes, be it under the Defendant's present name or other names which she has used or may use interchangeably, such as, Jasmine Agnes Adongo, Agnes Adongo, Nakato
20 Sumini, Nakato Sumin, as shown on the evidence before court, or such other name by which the Defendant may be identified hereafter.
- 25 3. The Plaintiff shall continue the process for grant of letters of administration to its logical conclusion, as per the law, including the requirement of section 201A of the Succession Act (as amended) requiring a Certificate of No objection to be issued by the Administrator before the petition can be considered by the High Court.

5 4. The Defendant shall pay costs of the suit to the Plaintiff.

It is so ordered.

Delivered, dated and signed in court this 13th March, 2024.

10

Handwritten: 13/03/2024
George Okello

JUDGE

15 Judgment read in Open Court

13th March, 2024

Attendance

Mr. Okot Douglas Odyek, counsel for the Plaintiff in court

20 Plaintiff in court

Defendant absent

No counsel for the Defendant

Mr. Ochan Stephen, Court clerk

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Handwritten: 13/03/2024
George Okello

JUDGE