

1 THE REPUBLIC OF UGANDA
2 IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO
3 HCT-14-CV-MC-0044-2018

4
5 THE ADMINSTRATOR GENERAL:..... APPLICANT

6

7

VERSUS

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9 COMMISSIONER FOR LAND REGISTRATION:..... RESPONDENTS

10

11 BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH COURT

12

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RULING

14 **Introduction**

15 This is an Application by way Notice of Motion brought under sections 33 of the Judicature Act
16 and 98 of the CPA and 0.52 r 1 and 3 of the CPR wherein the applicant seeks the following
17 orders that;

18 (a) The caveat by Christopher Mukasa registered by virtue of Instrument No. MKO36606 on
19 the 13th day of April 1977 on the certificate of title for land comprised in Kyagwe Block 70
20 plots 155, 20 and 21 P.U.P land at Nsambya be removed with immediate effect.

21 (b) The caveat by Dick Magoba Muyinda registered by virtue of instrument No. MKO36605
22 on the 13th day of April 1977 on the certificate of title for the suit land be removed with
23 immediate effect.

24 (c) The caveat of Robert Sebombo registered vide instrument No. MKO4272255 on 26th April
25 1984 on the certificate of title for the suit land be removed with immediate effect.

26 (d) The other caveats by Christopher Mukasa, Nelson Katende and Wilson Konde all
27 registered on the certificate of title for the suit land be removed with immediate effect.

28 (e) Costs of the Application be provided for.

29 The Application is supported by the detailed affidavit evidence of one Mwanje Mickey Mathias
30 c/o the Department of the Administrator General Plot 5, George Street, Georgian house,
31 Kampala.

32 **Brief facts**

33 The gist of application is premised on the fact that the Administrator General (AG) herein after
34 referred to as the applicant is the administrator of the estate of the late Susan Buyana Muyinda as
35 per succession Register Book No. 11/98 who is the Registered owner of land comprised in
36 Kyagwe Block 70 Plots 15, 20 and 21 PUP land at Nsambya. And as such, the office of the AG
37 is desirous of having white pages created for the said land in order to properly administer the
38 estate. That the office of the AG started the process of having the white pages created for the said
39 land from the blue page however, it was shocked to learn that there were various caveats
40 registered on the suit land and lodged by persons unknown to the office. That having realized
41 this fact, the office of the AG wrote to the Commissioner Land Registration (Respondent) to
42 issue notices to the Caveators to have the caveats removed. However, the office of the
43 Commissioner without any valid reason rejected the said application and declined to issue the
44 requested notices. That none of the Caveators has ever approached the office of the AG to prove
45 their claim and as far as the records in SR/11/98 in respect of the Estate of the late Susana
46 Buyanda Muyinda are concerned, no one has ever been granted succession certificates hence this
47 application.

48 The Respondent (Commissioner Land Registration) filed an affidavit in reply sworn by one
49 Golooba Haruna a Senior Registrar of Titles from the Office of Titles, Ministry of Lands,
50 Housing and Urban Development. In his evidence he admitted that his office had received an
51 application from the applicant on 31st August 2018 to issue notices to Caveators to have the same
52 withdrawn vide Instrument No. MKO143520. However, the application was rejected as the
53 office had to first retrieve all the relevant documents relating to the subject land. That upon
54 retrieving the said documents and perusal thereof, it was revealed that indeed there were caveats
55 lodged on the blue page of the said land proving the applicant's allegations.

56 And having acquired all the information, the respondent is now ready and willing to issue the
57 notices to the said Caveators as requested by the applicant.

58 **Representation**

59 At the hearing of this application, the applicant was represented by Counsel Robert Bogere from
60 the A G’s office. Despite filing a reply in the case, the respondent did not partake in the hearing
61 and neither did they file written submissions in this matter. Applicant’s counsel filed written
62 submissions which are on record and have been relied on in writing this ruling.

63 **Issues**

64 The applicant framed 1 issue for resolution to wit;

65 **Whether the respondent should be directed to vacate the caveats lodged in respect of**
66 **Kyagwe Block 70 Plots 15, 20, 21 land at Nsambya.**

67 **Resolution**

68 A caveat is defined to mean; a warning or proviso which has to be a legal or equitable interest
69 that is protectable by way of lodging a caveat. (*The Black’s Law Dictionary 8th Ed at pg. 666*)

70 Applicant’s counsel relied on *Section 139 of the Registration of Tittles Act (RTA) Cap230*
71 which provides for caveats;

72 *“Any beneficiary or other person claiming any estate or interest in land under the*
73 *operation of this act or in any lease or mortgage under any unregistered instrument or*
74 *by devolution in law or otherwise may lodge a caveat with the Registrar in the form in*
75 *the Fifteenth Schedule to this Act or as near thereto as circumstances permit,*
76 *forbidding the registration of any person as transferee or proprietor of and of any*
77 *instrument affecting such estate or interest until after notice of the intended*
78 *registration or dealing is given to the Caveat or, or unless such instrument is expressed*
79 *to be subject to the claim of the Caveator as is required in the caveat, or unless the*
80 *Caveator consents in writing to the registration.”*

81 He further referred to *section 140 (1) and (2) of the RTA*, which require the Registrar of titles to
82 notify the registered proprietor about the lodgment of such caveat on his title and also the
83 mandate to summon the Caveator to show cause why the caveat should not be removed.

84 Subsection (2) deals with the lapse of caveats after sixty days after the notice has been served on
85 the Caveator save for those lodged by or on behalf of beneficiaries to an estate.

86 Counsel submitted that the subsisting caveats on the blue page of the suit land were registered at
87 the very least more than 30 years ago, the latest having been registered in April 1984 and yet
88 none of the Caveators has ever petitioned the AG in respect of the same. He further noted that as
89 a pre-requisite of the law, the applicant wrote to the respondent requiring it to issue notices to the
90 Caveators on 31st August 2018 but the respondent with no valid reason declined to do so. That
91 the Caveators too have never taken any step to either move the courts of law or the AG by
92 proving their claim to the land in issues which the AG has been administering since 2000.

93 He further submitted that the respondents' allegation that they have only recently retrieved the
94 information with regards to the suit land cannot suffice because the same information has always
95 been available with the land office since even the applicant had accessed the same from them
96 through a physical search on the blue page and it was in fact the same information the applicant
97 had availed the respondent in their application of 31st August 2018 which the respondent rejected
98 without any plausible reason.

99 He referred this court to **section 25 of the Succession Act Cap 162** with regards to the devolution
100 of estate property belonging to a deceased person upon the personal representative. To this he
101 quoted **section 2(a)** of the Act which defines a personal representative as the administrator
102 appointed by a competent court and noted that since the AG acquired letters of Administration to
103 this estate on 11th July 2000, he therefore rightfully stands in this capacity.

104 He further cited **section 192 of the Succession Act** wherein, letters of administration entitle the
105 administrator to all the property belonging to the deceased and the fact that failure by an
106 administrator to realize the said property by neglecting to collect it renders the administrator
107 liable to make good the loss. That as such, it is the duty of the applicant as administrator of the
108 Estate of the late Susana Buyana Muyinda to seek orders from this court to have the subsisting
109 caveats vacated to enable the office realize this property for the benefit of the estate of the
110 deceased. Failure to do so will render the AG liable to make good any loss that may occur more
111 so if the property is taken fraudulently as is a common occurrence in the land office. He

112 emphasized that the said exercise cannot be achieved in the current state in view of **section 141**
113 **of the RTA** which prohibits any registration or dealing in land while the caveat remains in force.

114 Counsel further submitted it is the duty of the administrator to pay debts owed by the estate and
115 that if the Caveators have any beneficial interest in the land, then they only have to lay claim
116 which the applicant will accent to if they have merit.

117 He concluded by submitting that it would be unjust for this court to refer the applicant back to
118 the respondent given their earlier disingenuous conduct and that given sections 33 of the
119 Judicature Act and 98 of the Civil Procedure Act, this court is clothed with inherent powers to
120 make necessary orders for the ends of justice to be met and that court should therefore direct the
121 respondent to vacate all the caveats entered in respect of Kyagwe Block 70 Plots 15, 20 and 21
122 land at Nsambya, Mukono District (Blue page)

123 **Sections 4 and 5 of the Administrator General's Act Cap 157** give the AG priority in applying
124 for letters of administration to the estate of an intestate and in fact **section 5** strictly requires for
125 written proof that the AG has declined to administer the Estate before the same can be granted to
126 any other person. He is therefore rightfully clothed with the administration of the late Susan
127 Buyana's estate by virtue of the letters of administration granted to the office by Justice
128 Augustus Kania on 11th July 2000 at the High Court of Uganda at Kampala.

129 In view of the legal requirements already detailed by the applicant, it is the AG's legal duty as an
130 administrator of the estate to realize all the properties, debts, assets belonging to the estate of the
131 late Susan Buyana for the benefit of the beneficiaries as failure to do so amounts to breach,
132 making the grant liable to revocation.

133 It is Counsel's submission that the caveats in question were lodged on the suit land over 30 years
134 ago the latest having been lodged in 1984 and that despite the AG administering the estate since
135 2000, none of the Caveators have ever approached the applicant with any claim whatsoever. He
136 further stated that the Caveators are not even known to the office as beneficiaries to the
137 deceased's estate. Even further, it was confirmed by the respondent in its affidavit in reply that
138 the applicant had written to the respondent's office seeking that notices issue to the Caveators to
139 show cause why their caveats should not be removed however the respondents took no positive
140 action till filing of this suit.

141 The respondent apart from filing an affidavit in reply did not attend court when the matter was
142 fixed for hearing on 21st February 2019. Court proceeded exparte.

143 In their affidavit, deponed by Golooba Haruna, the Respondents admit, they received an
144 application from the applicant dated 31st of August 2018 to issue notices to the Caveators to have
145 the same withdrawn.

146 The caveats were lodged by Dick Magoba Muyinda on 13th April 1977 at 2:40 p.m. Christopher
147 Mukasa on the same date but at 2:45 PM and another caveat by Robert Sebombo. The
148 respondent did not mention the date for Sebombo but the applicant being the administrator of the
149 estate, indicated 26th of April 1984 and others.

150 The only issue for courts consideration ***is whether the Respondent should be directed to vacate***
151 ***the caveats lodged in respect of Kyaggwe Block 70 plots 15, 20, 21 land at Nsambya.***

152 It is trite law that the Administrator General has the statutory duty to manage estates of deceased
153 persons who die intestate.

154 It is not in dispute that the office of the Administrator General is managing the estate of the
155 deceased Susan Buyani Muyinda which authority was granted to it vide AC NO 099/2000.

156 The caveats were lodged before the Ad General obtained the grant. Courts is just surprised at the
157 inordinate delay by the Applicant to manage this land following the law. The Applicant was
158 expected to have filed an inventory within six months and possibly final accounts within a year
159 or as directed by court depending on the circumstances of this court. Court does not know who
160 the registered proprietor on this land was in 1977 and 1984 when the caveats were lodged.

161 But information from the respondent in paragraph 3 of the affidavit in reply shows that the
162 Applicant was registered on the blue page as the Administrator of the estate in the year 2000.
163 They have done nothing in this estate until 2018 when they applied to have the caveats removed.

164 The registration that changed proprietorship was made during the subsistence of the caveats
165 which in my opinion offends section 141 of the RTA.

166 The respondent in my opinion failed to do their work right from 1977, when the caveats were
167 first lodged and then in 1984.

168 This conduct of the respondent is a sign of neglect of statutory duty or sheer incompetence. 42
169 years and 35 years have since elapsed without the respondent handling the issue of caveats
170 lodged on this land.

171 It is the statutory duty of the respondent to notify the registered proprietor of any caveat lodged.
172 Ideally this should not take more than 60 days.

173 In the instant case it has taken more than 35 years.

174 Even if the Caveators had genuine reasons, a caveat which is a notice to the public and registrar
175 forbidding dealing with the land without written consent from the Caveator ceases to have
176 meaning if it is endless.

177 If the registrar failed to get them more than 35 years ago, it is not likely that he will get them
178 now.

179 In the interest of the estate which must be wound up, it is only fair that the caveats be vacated, to
180 enable the Administrator general wind up this estate. In case the Caveators are still alive, the
181 registrar should communicate to them to follow up their interest in this land from the office of
182 the Applicant who are not owners of this land but trustees as administrators.

183 The Respondent has not shown any sufficient cause for more time to issue notices to the
184 Caveators since they have failed to do so 42 and 35 years respectively.

185 It is ideal that the AG administers the estate in line with the law by realizing the properties and
186 distributing them amongst the beneficiaries to enable the said estate to be wound up which
187 process is already long overdue.

188 I find that the applicant has sufficiently made its case to warrant the lifting of all the caveats
189 subsisting on the suit land situate at Kyagwe Block 70 Plots 15, 20 and 21 land at Nsambya,
190 Mukono District and I hereby direct that all caveats on the above described land be vacated forth
191 with

192 In the result the Application is allowed.

193 Given the circumstances of this case no order is made as to costs.

194 I so direct.

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196 Dated this **13th** day of **March 2019**.

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200 MARGARET MUTONYI

201 **RESIDENT JUDGE**

202 **MUKONO HIGH COURT CIRCUIT**