



3. The Respondent has no caveatable interest in the suit land and the Applicant's interest in the said land has been affected without reasonable cause;

In her affidavit in reply, the Respondent Nansimbi Milly stated that the Applicant fraudulently transferred the land in Buddu Block 726 Plot 10 which has residue of Plot 108 and was subdivided into Plots 114 & 115. The suit land forms part of the estate of the late Asanasio Lugemwa Lugaaju father to the Applicant, Respondent and Drake Lugaaju who agreed to share the land into shares of 110 acres, 110 acres and 254 acres respectively. The Applicant transferred the land to herself and has refused to give the Respondent a succession certificate hence the caveat. The caveat was lodged to prevent any dealings until a specific certificate of title for the pieces of land is made for each of the beneficiaries of the estate of the late Asanasio.

In rejoinder, the Applicant stated that she surveyed the land and got her share of 110 acres as Plot 108 which was subdivided into Plots 114 & 115 and also surveyed for the respondent her 110 acres which was subdivided into Plots 71, 72 and 73 registered in the Respondent's names. The Applicant has been in possession of the mother title with the Respondent's consent and she never dealt in the suit land fraudulently hence the caveat was erroneously lodged.

**Determination of the application;**

***Issue one; Whether the Respondent has any caveatable interest in land comprised in Buddu Block 726 Plots 114 & 115 (formerly 108);***

The law governing beneficiary caveats as established under ***Section 139 of the Registration of Titles Act*** provides that; “Any beneficiary or other person claiming any estate or interest in land under the operation of this Act ... may lodge a caveat with the commissioner ...forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after notice of the intended registration or dealing is given to the caveator, or unless the instrument is expressed to be subject to the

*claim of the caveator as is required in the caveat, or unless the caveator consents in writing to the registration.”*

In the case of *Sentongo Produce Vs Coffee Farmers Ltd & Rose Nakafuma Muiyisa HCMC 690/99* cited in *Hunter Investments Ltd vs Simon Lwanyaga & Anor HCMC No. 034 of 2012*, it was held that for a caveat to be valid, the caveator or must have a protectable interest legal or equitable to be protected by the caveat otherwise the caveat would be invalid.

The Respondent stated in her affidavit that she is a beneficiary of the estate of the late Asanasio Lugema. This was not controverted by the Applicant who confirmed in her affidavit in rejoinder that the Respondent is her sibling and a beneficiary of the estate of the late Asanasio Lugema.

A caveat is lodged to protect the caveator’s interest and since the Respondent is a beneficiary of the estate of the late Asanasio Lugema, she has an equitable interest in the property which is caveatable interest in the suit land.

***Issue two; whether the caveat should be removed;***

A beneficiary caveat unlike other forms of caveats does not lapse and can only be withdrawn by the caveator, or removed on an Order of Court. In the instant case, the Applicant seeks to challenge the caveat lodged by the Respondent and for that reason, the Respondent has to show cause why the caveat should not be removed, failure of which would result into an order for vacation of the caveat by this Court.

It is the 2nd Respondent’s averment that the caveat is intended to protect hers and her late brother’s interest in the estate which they received from the distribution of the estate. She further averred that the Applicant fraudulently transferred part of the estate to herself, subdivided the same and sold part of the estate.

The Applicant contends that the caveat was erroneously lodged as she surveyed the land obtained certificates of title for her share and the Respondent's share and has been in possession of the Respondent's certificate of title with consent.

Neither of the Parties adduced evidence of the said caveat to enable the court establish the size of the caveated land as it would relate to the Parties' shares. Both Parties made allegations of fraud against each other and issues of fraud cannot be determined in an application of this nature.

Beneficiary caveats as already stated do not lapse unlike other caveats and the reason behind this is because, interests of beneficiaries need to be protected. A court cannot simply issue an order vacating the caveat without sufficient reason, evidence and grounds warranting such vacation.

However, it is clear in this case that both Parties have an interest in their father's estate and such are entitled to a share. The Applicant contends that she is holding onto the Respondent's certificate of title with her consent. It is very apparent from the fact that the Respondent lodged a caveat that she has not consented to the Applicant holding onto her certificate of title.

The Applicant having acknowledged that she is holding onto the Respondent's Certificate of Title should hand over the certificates of succession and certificates of title to the Respondent to enable the removal of caveat. The Respondent has a valid interest which should be protected and as such her caveat is valid and the fact that the Applicant admitted that she is holding onto her certificate of title, it is incumbent on the Applicant to hand over the certificates of title and formally distribute the estate in accordance with the certificates of succession.

The Applicant is therefore ordered to hand over the certificates of title and succession certificates along with the shares of the estate that each Party is entitled.

The Respondent's beneficiary caveat is valid and shall not be vacated unless such distribution, handover and transfer has been completed to protect each Party's interest.

**In the alternative**, since the Parties raise allegations of fraud, the court hereby directs that the Parties institute a civil suit for the dispute to be handled properly by a competent court and determined finally unless the Parties are open to settling the dispute amicably.

The Respondent has shown sufficient cause as to why her caveat should not be removed. This application is hereby disallowed.

Since parties are family, to facilitate reconciliation I will not condemn any in costs. Each party shall bear their own costs.

I so order.

Dated at Masaka this 5<sup>th</sup> day of November, 2021

Signed;  \_\_\_\_\_

**VICTORIA NAKINTU NKWANGA KATAMBA**

**JUDGE**