

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISC. CAUSE NO. 005 OF 2020

1. DONALD SEWANONDA KATUMBA

5 **2. BEREMPYA TONY KATUMBA :::::::::::::::::::: APPLICANTS**

VERSUS

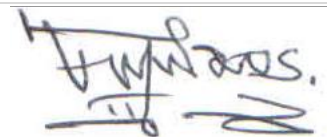
ELIZABETH MUHUMUZA RASMDEN :::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

10 The Applicant brought this Application under Section 33 of the Judicature Act and 98 of the Civil Procedure Act, Section 140 of the Registration of Titles Act and Order 52 rule 1 and 2 of the Civil Procedure Rules for orders that:

- 15 **1. The caveats instrument no FP 102271, FP 103662, KBO 00002582 and all other caveats lodged by the Respondents on land comprised of Burahya, Block 126, Plot 7, Land at Kyarukegeta, Kabarole District be removed/lifted to enable the Applicants survey off their portion and obtain a certificate of title and the estate of the late Yosia Kamuhigi be distributed per the inventory**
- 20 **of the administrators thereof.**



Respondent shall not be affected if the applicants' share is transferred into their names since it is known and intact.

6. That the Applicants have no objection to the distribution and the inventory filed by the administrators of the estate of the late Yosia Kamuhigi. That the estate is long overdue and thus should be dissolved and per the inventory.

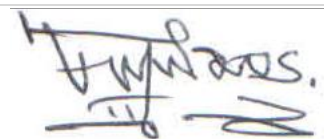
7. That all the beneficiaries agreed that the estate be transferred into the names of each of the beneficiaries per the inventory filed. That the interests of the Applicants do not affect those of the caveator and that it was fair that the application is allowed.

The Respondent was served by way of substituted service through advertising the summons in the *Daily Monitor* news paper of 25th November 2022 at page 40 per the affidavit of service deponed by Bright Tonny, a process server attached to M/s Ngamije Law Consultants and Advocates. I am satisfied that there was effective service upon the Respondent and thus I will proceed to consider the Application Ex-parte.

Issues:

1. Whether the caveats lodged by the Respondent on land comprised in Burahya, Block 126, Plot 7, Land at Kyarukegeta, Kabarole District should be removed and or lifted.
2. Remedies available to the parties.

Resolution:



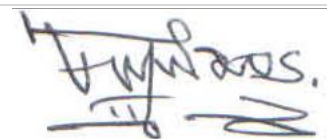
Section 140 (1) of the Registration of the Titles Act provides thus:

(1) Upon the receipt of such caveat the registrar shall notify the receipt to the person against whose application to be registered as proprietor or, as the case may be, to the proprietor against whose title to deal with the estate or interest the caveat has been lodged; and that applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor may, if he or she thinks fit, summon the caveator to attend before the court to show cause why the caveat should not be removed; and the court may, upon proof that the caveator has been summoned, make such order in the premises either ex parte or otherwise, and as to costs as to it seems fit.

The above section gives Court powers to order for removal of a caveat in the event the caveator does not show sufficient cause why the same should not be vacated.

In **Nakabuye Agnes Vs. Martin Strokes and Anor. Miscellaneous Cause No. 38 of 2021** at page 4 the Hon. Justice Kawesa stated that: ***“Under Section 140 (1) of the Registration of Titles Act, this Court is empowered, in applications of this nature, to make such orders as it deems fit. This includes the power to an order the removal of a caveat where the caveator fails to show cause show why it ought not to be removed”.***

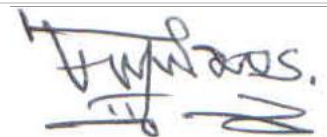
Caveats are not meant to last forever. They are meant to offer temporary protection to the caveator as he or she pursues his claim against the registered



proprietor or any person who claims interests in the registered land affected by the caveat. It is not the intention of the law that caveator should relax and sit back for eternity without taking any step to handle the controversy so as to determine the interests of the parties affected by it. The caveat only gives protection to the interests of the caveator as he or she is required to bring an ordinary action without undue delay to determine the caveator's rights as against other rights or competing interests and to obtain a permanent solution in an appropriate case. (*See Rutungu Properties Ltd Vs. Linda Harriet Carrington & Anor, Court of Appeal Civil Appeal NO. 61 of 2010*). It follows therefore that where one lodges a caveat and does takes steps to enforce his or her rights or claims over the land affected by the caveat, he or she can upon an application filed in the High Court be summoned to show cause why the caveat that he or she lodged should not be vacated and or removed. Once Court establishes that there is no cause why should not be removed, then it can make orders for removal of the same and other orders as to costs.

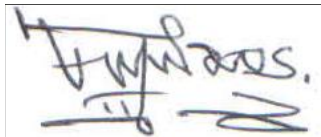
The Applicant alleged that the Respondent lodged a caveat on land comprised in *Burahya, Block 126, Plot 7, Land at Kyarukegeta, Kabarole District (Herein referred to as the suit land)*. That other beneficiaries under the estate had also lodged caveats on the said title and they have since died and thus asked court have the same vacated to enable them mutata and transfer the suit land into their names.

Under section 101 of the Evidence Act, whoever alleges a fact bears the burden to prove it. In this case the Applicants alleged that several caveats were lodged

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on land comprised in Burahya Block 126, Plot 7, land at Kyarukegeta by the Respondent and other deceased members of the family. They thus had the duty to prove the existence of such caveats. The existence of a caveat can be proved by among others producing a copy of the caveat, or by carrying out a search and producing a search report detailing the lodgment of such caveats. It is not enough to allege that a caveat was lodged.

In this case the Applicant merely alleged that the Respondent and other deceased family members lodged caveats on the suit land. They did not furnish any supporting evidence. I find that the Applicants failed to prove to the satisfaction of the court the existence of the alleged caveats to warrant an order for removal of the same. This Application therefore fails and it is accordingly dismissed with no orders as to costs. I so order.



Vincent Wagana

High Court Judge / Fort-portal
6.3.2023

