

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA  
CIVIL SUIT NO.104 OF 2016**

1. TERRY KAGGWA (13 YEARS)
2. TATIANA DESIRE  
KAGGWA (11 YEARS)
3. DION DENISE KAGWA (7 YEARS) ===== PLAINTIFFS
4. TREVOR OX KAGWA (4 YEARS)
5. LUNKUSE DEBORAH (8 MONTHS)  
(THROUGH KIRABO ANNET  
& BUSINGYE KELLEN AS NEXT FRIENDS)

**VERSUS**

1. NAMUGENGA MILLIAM KAYAGA
2. ANDREW SSONKO ===== DEFENDANTS

**BEFORE JUSTICE MICHAEL ELUBU**

**RULING**

At the commencement of the hearing of the suit, counsel for the defendants raised a preliminary point of law.

The contention is that the suit is premature considering the provisions of S.255 and S. 265 of **The Succession Act Cap 162**.

That S. 255 prohibits the dealing with a petition for Letters of Administration after a caveat against the grant has been lodged with the court until after notice to the person who lodged the caveat.

The defendants also cited S. 265 which prescribes the procedure in such contentious matters. It provides that the proceedings shall take the form of a regular suit in which the petitioner for Letters of Administration shall be the plaintiff and the person who appeared to oppose the grant shall be the defendant.

The complaint is that the Plaintiffs lodged a caveat, and before notice could be issued filed this suit.

It was argued that the right procedure should have been that as the defendants had petitioned for Letters of Administration, and the Plaintiffs had lodged a caveat, then the defendants would have issued a notice to the Plaintiffs indicating intention to challenge the caveat. It is thereafter that a suit would be filed by the defendants and not the plaintiffs.

The contention is that as the correct procedure was not followed in this case then the suit is incompetent.

The Plaintiffs, in reply, oppose the objection. It is their contention that they are neither the applicants for Letters of Administration nor do they seek to remove the caveat. That the suit seeks orders against the defendants who are intermeddling with the estate and have even disposed of some of its property.

Besides the defendants took no steps to challenge the caveat lodged but were disposing of the estate property. As a result the plaintiffs could not just sit back as the defendants wasted the estate.

For that reason it is argued that the suit is competent and the preliminary objection should be overruled.

The defendants reiterated their prayers in rejoinder.

Briefly, the facts are that one KAGWA ALEX is the deceased father of all the Plaintiffs. He suffered death by electrocution on the 28<sup>th</sup> of July 2015.

The Defendants are his brother and sister. On the 3<sup>rd</sup> of March 2016 the defendants petitioned for Letters of Administration and were granted a Certificate of No Objection by the Administrator General.

On the 22<sup>nd</sup> of March 2016 the Plaintiffs placed a caveat against the application ostensibly to protect the interests of the Plaintiffs which they alleged the defendants had not taken into consideration.

On the 20<sup>th</sup> of May 2016 the Plaintiffs filed this suit. The claim is for orders that the defendant's application for Letters of Administration be rejected and the letters of administration instead be granted to two of the mothers of the Plaintiffs. They also pray that the Defendants make an account of the property of the deceased.

It was alleged in the facts establishing a cause of action that the defendants evicted one of the mothers of the plaintiffs; that they sold off a vehicle; that no personal property of the deceased was released to the plaintiffs; and generally that the defendants show no concern for the welfare of the plaintiffs.

The Defendants deny all these claims.

Turning now to the merits I agree with the procedure laid out in the submissions of counsel for the defendants. According to Sections 255 and 265 of **The Succession Act**, where a caveat has been lodged, notice ought to be given by the petitioner, to the caveator, of intention to file a suit challenging the caveat.

There is no indication in this suit that the defendants ever issued such notice. There is therefore no evidence to show that the defendants intended to challenge the caveat filed against the application for Letters of Administration.

Secondly the Plaintiffs allege waste of the estate. This is aside from the application for letters from letters of administration. An allegation of waste is something that ought to be inquired into.

For this reason, this court holds that the challenge here is not about the Plaintiffs placing a caveat against the petition for Letters of Administration but goes further as seen here.

In my view therefore, the preliminary point is misplaced and shall be dismissed with costs.

The suit shall proceed to hearing.



MICHAEL ELUBU

JUDGE

26/11/2018

15.1.19.

*Plaintiff advised  
Mr. Justice of the plaintiffs presence  
Miss. Clerk  
CWA: Plaintiff delivered in the presence of the above.*