

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY DIVISION

MISCELLANEOUS CAUSE NO. 0172 OF 2021

LUKOMA HARUNA:..... APPLICANT

VERSUS

NAMUSOKE GRACE:..... RESPONDENT

Before: Lady Justice Ketrach Kitariisibwa Katunguka.

Ruling.

Introduction:

- 1.** This Application is brought by way of Notice of Motion by Counsel for the Applicant for grant of orders that;
 - a. The Respondent's caveat be removed from land comprised as Busiro Block 489 Plot 96.
 - b. The Commissioner for land Registration/Registrar of titles removes
 - c. The suit be fixed for hearing on its merit.
 - d. Costs of the Application be provided for.

- 2.** The grounds of the Application are contained in the Affidavits in Support deposited by Lukoma Harunah (herein the Applicant) and briefly are that; the Respondent no longer has any lawful cause to maintain the caveat on land comprised as Busiro



Block 489 Plot 96; as a result of the continued maintenance of the caveat on the said land, the Applicant and other beneficiaries to the estate of the late Bulega Hamiisi has suffered and continues to suffer damage and or loss; the interests of justice demand that the caveat be removed.

3. The Application is supported by the following; A copy of the grant of Letters of Administration, the title and a copy of the inventory.
4. When the matter came up for hearing on 21st November, 2022 court noted that there was an Affidavit of service showing that the Respondent was served by the Notice being advertised in the Monitor Newspaper of Monday October 31, 2022 pursuant to order of court dated 10/10/2022 but the Respondent had not filed a reply. Court ordered that the matter proceeds exparte under O9 r11(2) of the CPR and would rely on the submissions.

Representation;

5. The Applicant was represented by Counsel Bbale Sadat and Respondent was absent and she was not represented.

The Case:

6. The land comprised as Busiro Block 489 Plot 96 originally belonged to Lukoma Hamiisi who is now deceased; upon the demise of Lukoma Hamiisi the Applicant was appointed as the Administrator and subsequently registered on the said title in that capacity; the Applicant subsequently distributed the estate of the late Lukoma Hamisi to all its beneficiaries; the Applicant intends to cause for subdivision of the said land so that every beneficiary can obtain his or her entitlement as reflected in



the inventory but that cannot be achieved because of the pendency of the caveat on the said title that was lodged thereon by the Respondent;

7. The Respondent is a beneficiary to the estate of the late Gombe Muhammed Musoke and that family has been advanced its share as reflected in the inventory and she has to wait for their share to be registered in the administrator of the estate of the late Gombe Muhammed Musoke and then she requests for her share; the Respondent has no further claim to maintain the caveat on the said land. I have carefully read and considered the application together with the affidavit in support, and the submissions by counsel for the applicant;

The issue for determination is whether the application has merit;

Determination.

8. A caveat on land is a warning to the public that the caveator has interests in the land and anyone dealing in it does so at their peril; the caveator must have an interest in the land otherwise such caveat is invalid(see *(Sentongo Produce V Coffee Farmers Limited & Anor vs Rose Nakafuma Muiisa HMC 690/99)*).
9. In the case at hand the family under which the respondent claims a share to the estate of the late Lukoma Hamisi is that of Gombe Muhammed Musoke; the applicant avers that the said family of Gombe Muhammed Musoke has been allocated land but that land can only be accessed by the respondent after it has been curved out and registered in the names of the administrator for the estate of the said Gombe Muhammed Musoke; that the inventory is clear on the entitlement of the estate of the respondent's family;

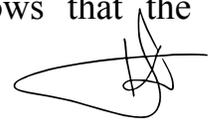


10. Since the applicant concedes that the respondent belongs to the said family of Gombe Muhammed Musoke until the said family gets their entitlement the respondent has caveatable interest in the suit property and consequently the capacity to lodge the said caveat;

11. The role of the administrator is known; Section *180 of the succession Act* provides that an administrator is a legal representative for all purposes and all property of the deceased person vests in him or her as such; this position was considered and restated in *Maureen Tumusiime v Macario & Anor. [2006] 1 HCB*; section 192 and 193 of the Succession Act, provide that letters of administration vest in the administrator all rights and interests belonging to the intestate as effectively as if administration had been granted at the moment after his death. (see *Khalid Walusimbi v Jamil Kaaya & Anor (1993) 1 KALR 20*).

12. The above stated position of the law would therefore mean that unless the administrator has in the administration of the estate, refused/failed/ignored to acknowledge the rights of a beneficiary and is at the brink of alienating the estate to the detriment of the beneficiary, then the administrator ought to be allowed to do his/her work (see *Kataabu v Ssimbwa and Anor (Miscellaneous Cause 121 of 2020) [2021] UGHCLD 11 (10 March 2021)*; where (*Hunter investments ltd vs Simon Lwanyanga & Another Miscellaneous Cause No. 34 of 2012*,; and *Hooke vs Holland (1984) WAR 167*) were cited; to the effect that the fact that the caveator has a caveatable interest does not in itself mean that he or she had a reasonable cause to lodge the caveat.

13. In the case at hand it appears the basis upon which the caveat was lodged has lost position; because the inventory filed in court on 8/11/2021 shows that the



respondent's family (listed as no. 1 paragraph C(ii) is to get 2.24 acres;The administrator of an estate can only effectively distribute the estate to beneficiaries if he is able to deal with the estate; which he can not do unless the caveat is lifted; *(See: Anna Maria Nakamya v Ntandan Pascal Miscellaneous Cause No. 14 of 2017).*

I have not seen any evidence that the applicant is not going to distribute according to the inventory;

In the premises this application has merit;

It is hereby ordered as follows:

- 1.The Respondent's caveat shall be removed from land comprised as Busiro Block 489 Plot 96.
2. The Commissioner for land Registration is directed to remove the caveat from land comprised as Busiro Block 489 Plot 96.
3. Each party shall bear their costs.



Ketrach Kitariisibwa Katunguka

Judge

02/1/2023

Delivered by email to:balesada2@gmail.com