

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT JINJA**  
**(ADMINISTRATION CAUSE NO. 80 OF 2022)**

**IN THE MATTER OF THE ESTATE OF THE LATE BAATAKAN  
AYAZIKA YOKUSANI AZIMAVESI AKUBOOTA (DECEASED)  
FORMERLY RESIDENT OF DUDHUBA, IKUMBYA, LUUKA  
DISTRICT**

**AND**

**IN THE MATTER OF AN APPLICATION FOR PROBATE BY STEVEN  
JOHN WAIDHUBA (SON OF THE DECEASED) AND WAIDHUUBA  
ISENDABAGUZI DAUDI RUTH MPAMULEY (EXECUTOR OF THE  
WILL)**

**CAVEAT REGISTRATION ON AN APPLICATION FOR LETTERS OF  
PROBATE BY STEVEN JOHNSON WAIDHUBA (SON OF THE  
DECEASED) AND WAIDHUUBA ISENDABAGUZI DAUDI RUTH  
MPAMULEYI (EXECUTOR OF THE WILL)**

**BEFORE: JUSTICE FARIDAH SHAMILAH BUKIRWA**

**RULING**

**Background**

The late Baatakan Ayazika Yokusani Azimavesi Akuboota died testate on the 6<sup>th</sup> day of May 2022. In his will, he named Steven John Waidhuba and Isendabaguzi Daudi Ruth Mpamuleyi as executors. The deceased is survived by a widow, Lovisa Ayazika Marion Kateme who is one of Caveators to the application for probate and is also the biological mother of Steven Johnson Waidhuba, one of the Petitioners for probate. The deceased was survived by ten children, six of whom are also caveators. The Caveators are challenging the will and the authenticity of the death certificate of the deceased.

The Petitioners applied for Probate for the estate of the late Baatakan Ayazika Yokusani Azimavesi Akuboota on 8<sup>th</sup> August, 2022. The Notice of the Application was advertised on 10<sup>th</sup> August, 2022 in Bukedde Newspaper. The matter was fixed for identification of the Applicants on the 5<sup>th</sup> day of September 2022 but the Petitioners had not executed the Administration Bond so it was adjourned to the 27<sup>th</sup> day of September 2022. However, a caveat was lodged on the Application for Probate on the same day. The Parties appeared before the Deputy Registrar of this Honourable Court and the Petitioners objected to the



caveat particularly on the ground that it was not filed within the mandatory 14 days as required in the Notice of intention to apply. The file was then forwarded to the Judge for further directions.

### **Representation**

The Parties appeared before Court without lawyers and gave Court an insight into the matter. The Caveators (referred to as “Applicants”) argued that a caveat can be lodged at any time while the Petitioners for probate (referred to as “Respondents”) contended that the caveat was filed out of the fourteen days stipulated under the law and therefore should not be entertained by this Honourable Court. Court ordered parties to file submissions to support their arguments. The Applicants (Caveators) filed their submissions through Mudawa & Kyogula Advocates while the Respondents filed their submissions through Mangeni Law Chambers & Co. Advocates.

### **Submissions**

Counsel for the Applicants premised his submission on **Section 253 of the Succession Act** for the proposition that there is no time frame provided for lodging a caveat to prevent grant of probate. He contended that under **Section 255 of the Succession Act**, no proceedings shall be entertained by Court on a petition for probate after a caveat against the grant of the Petition has been entered with the judge or officer with whom the application has been lodged. Counsel concluded that an aggrieved person who has learnt of a petition for grant of probate after the lapse of 14 days’ notice but before issuance of the grant by Court ought not be locked out of obtaining justice since the Petitioner cannot be prejudiced and it will save subsequent court battles to revoke the grant.

Counsel for the Respondent argued in reply that the caveat is required to be lodged to prevent the grant of letters of probate/administration within 14 days after the Petitioner has caused the notice of his or her intention to be published in either Uganda Gazette or any Newspapers circulating in the country. Counsel referred to **Rules 2,3, and 4 of the Judicature Act (Administration of Estates) Statutory Instrument 13-7**. Counsel contended that the Applicants filed the caveat after the 14 days contrary to the law yet they were fully aware of the existing facts as regards the Petitioners intention and processing of the probate.

Counsel cited the case of **Kisitu John Bosco & Anor Vs Ntege Steven & 2 Ors HCCS No. 189/2017** for the procedure of obtaining letters of Administration. I will reproduce the same;



**“Any person who wants to object to the grant of the letters of administration notifies the court advertising the application for letters of administration within 14 days from the time the application was made”**

He went ahead and held that where no objection is filed, at expiry of 14 days, Court may grant the letters of administration.

Counsel concluded that the caveat was lodged after the expiry of 14 days hence their action is time barred and cannot be entertained by this honourable Court.

Counsel for the respondent also referred to **Article 126(2) (e)** and the **case of Kasirye Byaruhanga & Co. Advocates Vs Uganda Development Bank, SCCA No. 2/97** to support his argument.

Counsel further urged that the law of limitation is basically one that “once statute barred, always statute barred and the essence of the principle is that once a suit is statute barred, any subsequent developments cannot revive it. He referred to the case of **Arnold vs General Electricity Generating Board [1988] AC 288 and Nicholson Vs England [1926]**.

Counsel concluded that the caveat was lodged out of time and cannot be acted on to make a decision. That the Respondents have an alternative remedy of filing a suit to contest the grant and the will.

Counsel for the Applicants in rejoinder retaliated his earlier position and referred to **Rule 2, 3 and 4 of the Judicature (Administration of Estates) Rules S. I 13-7**. He also contended that **Article 126 (2) (e)** was quoted out of context in this matter.

### **Issue**

Whether the caveat lodged by the Applicants after the expiry of the fourteen days from the date of advertising the notice of the application is time barred.

### **Analysis**

**Blacks Law Dictionary, 4<sup>th</sup> edition on page 281** explains that caveat is a Latin phrase which means “Let him beware “or a “warning or proviso.” It is an intimation to a judge or other officer notifying him to suspend a proceeding until the merits of the caveat are determined.

The purpose of lodging a Caveat by the Respondents serves to bring their claims to the attention of Court. This Court’s duty is to determine the veracity of those claims and to make a decision as to whether it they are misconceived, premature or valid. (See **Delahaije Joseph Geetruda Vs Kasolo Robins Ellis & Kisembo John AC No. 1558 of 2018**).



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Caveats against the grant of probate are provided for under **Section 253 of the succession act as amended** where in it is stated that;

**“Caveats against the grant of probate or administration may be lodged with the High Court or a district delegate, and immediately on any caveat being lodged with ant district delegate, he or she shall send a copy of it to the High Court.”**

Counsel for the Respondent/Petitioners cited the case of Kisitu John Bosco(supra).

From that case, Court expects a caveat to be lodged within 14 days and if there is none lodged, it may grant the letters of administration or it may not depending on the circumstances surrounding the case.

**Rule 3 of the Judicature (Administration of Estates) Rules** provides that;

**“No application for probate or for letters of administration shall be granted until fourteen clear days after the provisions of rule 2 of these rules have all been complied with. For the avoidance of doubt, rule 2 provides for advertising of the notice”.**

The rule does not give the fourteen days as the time within which to lodge a caveat but rather a direction to Court to wait for the lapse of the 14 days before granting the probate and if after the lapse of those days no caveat is lodged, court “may” proceed to grant the probate.

The law has to be read in relation to the notice itself. I will here in refer to an extract of the notice where in it states that,

**“TAKE NOTICE** that an application for probate for the estate of the late **BAATAKAN AYAZIKA YOKUSANI AZIMAVESI AKUBOOTA** Formerly of Budhuba, Ikumbya, Luuka District has been lodged in this Honorable Court by **STEVEN JOHNSON WAIDHUBA BIOLOGICAL SON AND APPOINTED HEIR TO THE DECEASED) and WAIDHUBA ISENDABAGUZI DAUDI RUTH MPAMULEY RESPECTIVELY AS EXECUTORS.**

This Court will proceed to grant the same if no caveat is lodged with this Honorable Court within **fourteen days (14)** from the date of this **NOTICE unless a justifiable cause be shown to the contrary.** (Emphasis mine)

It is my opinion that Court is free to grant the probate after the 14 days. It does not mean that immediately after the 14 days, the objectors lost their right to lodge



a caveat. If the objector is lucky enough to find that the grant is not yet issued after the 14 days, they can lodge the caveat.

To buttress this, the notice its self is clear as it puts an exception for showing cause after the expiry of the 14 days where in it provides that if there is no caveat lodged at the lapse of the 14 days, it goes ahead to grant the caveat **UNLESS A JUSTIFIABLE CAUSE BE SHOWN TO THE CONTRARY.** This means that the lapse of the 14 days does not automatically extinguish the right to show cause why the grant should be not be issued. I agree with Counsel for the Applicants/Caveators that there is no time frame within which to lodge the caveat and the dynamics only change upon grant of the probate/letters of administration. I thus hold that the caveat lodged after the expiry of the 14 days is not time barred.

From the fore going, I find that the 14 days stipulated under the law do not bar the lodging of the caveat but constitute guidance on when the Court should grant the probate. Any objection to the grant of probate can be lodged after the 14 days where justifiable cause can be shown to the contrary.

I therefore find that the caveat lodged after the fourteen days stands and therefore the caveators are advised to follow the right procedure as provided for under the Succession Act.

I thus order.



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**Justice Faridah Shamilah Bukirwa.**  
**Ruling delivered on 20<sup>th</sup> January 2023.**