

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISCELLANEOUS CAUSE NO.088 OF 2020

5 **HAJJAT ZAINABU MAWANDA:.....APPLICANT**

VERSUS

1. MAWANDA SULAIMAN

2. MIN MAWANDA

3. FATUMA MAWANDA:.....RESPONDENTS

10 **Before: Lady Justice Alexandra Nkonge Rugadya.**

RULING.

Introduction:

15 The applicant brought this applications by Notice of Motion under the provisions of **section 140 Registration of Titles Act Cap 230, Sections 33, 38 & 39 Judicature Act Cap 14, Section 98 Civil Procedure Act and Order 52 rule 1 of the Civil Procedure Rules S.I 71-1.**

20 It seeks orders that court summons/directs the respondents who lodged a caveat on the certificate of title of land comprised in **Kibuga Block 12 Plot 1297 at Kampala Hill** (hereinafter referred to as the 'suit land'), to show cause why the caveat should not be removed; and for directions/orders to the Commissioner Land Registration to remove the caveat registered as **Instrument No. KLA 378921** lodged on 19th June, 2008, as well as costs of the application be provided for.

Grounds of the application:

25 The motion was supported by the affidavit of the applicant, **Hajjat Zainabu Mawanda**, in which she stated that she purchased the suit land from the late Hajji Saidi Mawanda, her husband before he died.



That a sale agreement in respect of the same was executed between the applicant and the deceased on 14th October, 1996 in the presence of three witnesses.

That upon obtaining letters of administration in respect of the estate of the
5 Late Hajji Saidi Mawanda, the applicant was registered as the proprietor of the suit land in her capacity as the administrator of the estate of the deceased.

She further contends that before she could transfer the suit land into her names, the respondents claiming an interest in the suit land as the beneficiaries of the deceased's estate lodged a caveat thereon.

10 The respondents went ahead to institute **High Court Civil Suit No. 98 of 2009** in the Family Division, claiming the suit land. A compromise was reached and an intended consent agreement was reached wherein the respondents agreed that they had no interest in the same. However, the consent agreement has never been endorsed and sealed by court.

15 Both counsel were directed by this court to file written submissions which they did.

The applicant was represented by **M/S Ayigihugu & Co. Advocates**, while the respondents were represented by **M/S Kangaho & Co. Advocates**.

Analysis of the evidence:

20 The applicant presented to court a copy of the sale agreement between her and the late Saidi Mawanda, **annexure 'A'**; a certificate of title confirming her registration in her capacity as the administrator of the estate of the late Saidi Mawanda under Instrument No. KLA 328696 of 20th March, 2007, **annexure 'B'**.

25 That evidence was complimented by a copy of the respondents' application by which the caveat had been lodged on the suit land; and the affidavit in support of the same, marked as **annexure 'C'**; together with a copy of the draft consent decree in respect of **High court Civil Suit No. 98 of 2009**.



The consent was however never signed and sealed by the Registrar of the court.

The applicant pleaded that the respondents jointly lodged the caveat in respect of the suit land as beneficiaries of the estate of the late Saidi Mawanda and that the removal of the same will prejudice the interests of the respondents as the beneficiaries of the estate.

That the respondents also instituted a suit in this court, vide: **High Court, Civil Suit No.293 of 2017** but made no effort to prosecute it and the same was due for dismissal.

10 **Resolution by court:**

I have carefully read the pleadings and submission by either side and I do not intend need to reproduce the matters raised, as I have taken each into consideration.

The respondents on opposed this application through the affidavit in reply of Ms. Fatuma Mawanda, the 3rd respondent herein. The contention by them was that the suit land constitutes part of the estate of the late Hajji Saidi Mawanda and that the sale agreement in respect of the same was forged by the applicant, otherwise there would be no reason why the applicant would have been registered on the suit title in her capacity as the administrator of the deceased's estate if she had indeed purchased the property.

The 3rd respondent admitted in *paragraph 13* of her affidavit that they indeed lost interest in the **Civil Suit No. 98 of 2009**, and thereupon abandoned the same.

In rejoinder, the applicant contended that the respondents are aware that the suit land is her personal property and that she did not hold the suit land on behalf of the respondents or any other beneficiaries of the late Saidi Mawanda.

This court duly noted that ass per **(Annexure E), Civil Suit No. 98 of 2009** had been dismissed by court on 25th September, 2017 by court presided over by Justice David Matovu.



The orders sought in this suit appear to be the same as those under the pending suit: **Civil Suit No.293 of 2017**, under which the plaintiffs therein sought among others, revocation of the letters of administration granted to the defendant/applicant in respect of the late Saidi Mawanda's estate.

- 5 From the court case administration system, the pending suit is currently before Justice Ketra Katunguka, with the next hearing date fixed as 9th December, 2020.

Also noted was the fact that both plots **No. 1296 and 1297 of block 12, (Annextures X and B**, respectively) are registered in the names of the applicant in her capacity as the administrator of the estate of the late Haji Saidi Mawanda.

Caveats were lodged against both titles by the three respondents. In the consent which was signed by the applicant, the 1st and 2nd respondent agreed to have the caveats dislodged.

- 15 The 3rd respondent, Ms Fatuma Mawanda who deponed the affidavit in reply and one Gida Mawanda however were not party to the suit under which the 'consent' was made: vide **Civil Suit No. 98 of 2009**.

Gida Mawanda was not one of the caveators and therefore is not a party to this application. Both Fatuma Mawanda, the 3rd respondent and Gida Mawanda are however parties to the suit still pending before the family Division, **Civil Suit No. 293 of 2017**.

The plaintiffs in that suit seek to challenge the purported will of the deceased; revocation of the letters of administration granted to the applicant; grant of letters of administration to the plaintiffs or all the children of the deceased; order for distribution of the estate to all beneficiaries; and a permanent injunction restraining the applicant/defendant from dealing with the estate; and order for compensation for the loss and damage to the estate.

The matters raised in the pending suit, especially on the validity of the will of the deceased and the grant, as well as the compensation may be affected by orders ensuing from this application.

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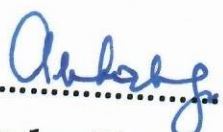


From the above findings, it therefore is the opinion of this court that since both titles are still registered in the applicant's names as the administrator of the estate, a decision made hereunder may deny those plaintiffs who are not parties to this application the right to be heard.

5 Thus also to avoid the danger of two courts issuing conflicting orders, I would decline to hear this application as it is premature. Whatever has been raised in this application can be, and is hereby referred to the family division for the full hearing and final determination.

I therefore dismiss this application with no costs awarded to either side.

10 I so order.


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Alexandra Nkonge Rugadya
Judge.

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12th November, 2020.