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**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(LAND DIVISION)**

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**MISCELLANEOUS CAUSE NO. 002 OF 2020**

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**NAMALA MARGARET BUSUULWA & ANOTHER ::::::::::::::::::::**  
**APPLICANTS**

**VERSUS**

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**BEATRICE BUSUULWA & ANOTHER ::::::::::::::::::::**  
**RESPONDENTS**

**(BEFORE: LADY JUSTICE IMMACULATE BUSINGYE BYARUHANGA)**

**RULING**

25 This application was brought by way of Notice of Motion under Section 33  
of the Judicature Act, Sections 3, 140 (2) and 188 of the RTA, Section 101  
of the Civil Procedure Act, and Order 52 Rules 1 & 3 of the Civil Procedure  
Rules seeking the following Orders:-

- 30 1. The Respondents caveat lodged on the white page for land  
comprised in LRV 1029, Folio 8 also known as Gomba Block 322 and  
324 Plot 1 situate at Lugusulu Gomba vide Instrument Number  
**480058** dated the 12<sup>th</sup> day of December 2012 be removed by the  
Register of Titles to pave way for the distribution of the land  
amongst rightful beneficiaries.
- 35 2. The land comprised in LRV 1029 Folio 8 also known as Gomba Block  
322 and 324 Plot 1 situate at Lugusulu Gomba be subdivided into  
Plots of different sizes in accordance with the memorandum of  
understanding dated 5<sup>th</sup> August 2016 to enable its distribution to the  
rightful beneficiaries of the estate of the Late Busulwa Yekoyada as  
40 stipulated in the memorandum of understanding.
- 45 3. Court appoints a surveyor to subdivide land comprised in LRV 1029  
Folio 8 also known as Gomba Block 322 and 324 Plot 1 situate at  
Lugusulu Gomba into Plots of different sizes in accordance with the  
memorandum of understanding dated 5<sup>th</sup> August 2016.

5 4. That court directs that the costs incurred in the process of subdivision and distribution of the estate of the late Busuulwa Yekoyada, removal of the caveat and other attendant costs necessary to put into effect the orders of the court be paid from the Estate of the Late Yekoyada Busuulwa.

10 5. Costs of this application be paid from the estate of Yekoyada Busulwa.

The application is supported by the affidavits of Namala Margaret and Kaziro Samuel with the following grounds:-

15 1. The Late Busuulwa Yekoyada left land comprised in LRV 1029 Folio 8 also known as Gomba Blocks 322 and 324 Plot 1 situate at Lugusulu Gomba which is supposed to be distributed among different beneficiaries but the same is encumbered by a caveat lodged by the Respondents.

20 2. Letters of Administration for the Estate of Busulwa Yekoyada were first granted to Stuart Sewakiryanga, Idah Nambalirwa, Kaziro Samuel, Kato Lauben Kiwalabye and Namirembe Justine but were later cancelled and granted to Stuart Sewakiryanga, Kaziro Samuel and Namala Margaret Busuulwa vide HCT-00-FD-CS 239 of 2016.

25 3. By a memorandum of understanding dated 5<sup>th</sup> August 2016, some of the beneficiaries of the Estate of the Late Busulwa Yekoyada who represented others agreed that the land comprised in LRV 1029 Folio 8 also known as Gomba Block 322 and 324 Plot 1 situate at Lugusulu Gomba be distributed in accordance with the provisions of the said memorandum of understanding dated 5<sup>th</sup> August 2016.

35 4. That whereas Kaziro Samuel and Namala Margaret Busuulwa are interested in subdividing land comprised in LRV 1029 Folio 8 also known as Gomba Block 322 and 324 Plot 1 situate at Lugusulu into plots of different sizes to enable its distribution to the rightful beneficiaries of the estate of the late Busulwa Yekoyada as stipulated in the memorandum of understanding dated 5<sup>th</sup> August 2016, Stuart Sewakiryanga and Beatrice Busuulwa have resisted the subdivision of the land by descending on the land and have caused  
40 fear and threat to the applicants that demarcation and /or

subdivision of the land cannot be effected unless court grants an order to that effect.

5 5. For purposes of putting into effect the terms of the above memorandum of understanding, there is need to subdivide the land into plots of different sizes in accordance with the memorandum of understanding to the rightful beneficiaries.

10 6. Unless court grants the order directing for subdivision of the land into plots of different sizes in accordance with the dated 5<sup>th</sup> August 2016, the land will remain undivided which will affect the execution of the memorandum nugatory and unenforceable thereby denying the beneficiaries of the said land their rightful entitlements.

15 7. Unless the said caveat is removed from the white page, the same shall continue to encumber the land and the applicants will be frustrated in having the land distributed among its respective and rightful beneficiaries.

20 The second respondent filed an affidavit in reply and deponed that he is a co-administrator with the applicants in respect of the estate of the late Yekoyada Busuulwa and that there was a memorandum of understanding arising from Miscellaneous Application No. 128 of 2016 (Execution Division) whereby the farmland in Gomba comprising Block 322 & 324 Plot 1 LRV 1028 Folio 8 was to be equally shared among the beneficiaries after dealing with the interests of Budondo, Karana, Israel Nuwagaba, Jane Nsubuga and Dr. Anthony Nsereko.

30 The second respondent also deponed that he and Ms. Beatrice Busuulwa (his elder sister) decided to lodge a caveat because the beneficiaries of the estate were bickering over sharing of the property in order to prevent any form of fraud taking place on the land. The second respondent stated that earlier on in 2014 some of the beneficiaries attempted to sell the farmland without involving other beneficiaries. The sale agreement by 19 beneficiaries dated 15<sup>th</sup> July 2014 in respect of LRV 1029 Folio 8 Plot 4 Gomba Block 322 and 324 measuring approximately 1920 acres is attached as Annexure "B" nineteen beneficiaries attempted to sell to Nabulanyi Enterprises Ltd whereby the nineteen beneficiaries indicated that they were all administrators of the estate of the Late Yekoyada Busuulwa.

40 The second respondent further indicated that the applicants and their siblings had on 9<sup>th</sup> January 2014 sold the same farmland to Israel Kayonde who also attempted to lodge a caveat on the said land (Annexure "C").

That the applicants and their siblings sold the same farmland to different people including Sebugwawo, Nyansio Ssemanda who later sold to Nkuranga Charles (Annexure "D" & "E"). According to the second respondent the beneficiaries from Manyi and Mityana are the ones who facilitated these illegal sales including the applicants. That all beneficiaries from Ngomanene Gomba were excluded from the said transactions.

The second respondent further deponed that the applicants obtained a letter from the Deputy Registrar of the court to have them registered as proprietors of the suit land and the Registrar of Titles without considering the 2<sup>nd</sup> Respondent as Co-administrator registered the administrators on title without identification (Annexure "H"). The second Respondent further stated that the applicants applied for a special Certificate of Title well knowing that the second Respondent was in possession of the duplicate Certificate of Title. The Respondent also stated that the Resident District Commissioner of Gomba had facilitated a meeting whereby it was agreed that one Kamali who was the surveyor of their father should survey the land and demarcate the same but this could not be achieved. The second Respondent stated that the caveat should be maintained until the proceeds of subdivision and transfer of the respective interests are concluded and the caveat is only removed to effect the respective transfers.

There was also an affidavit in reply by Kamali Nzaba Theohpilus who deponed that in 1996 he was commissioned by the Late Yekoyada Busuulwa to open boundaries of his land comprised in Plot 1 Block 322 and 324 Gomba and also in the year 2000 he worked on the same piece of land under the supervision of Kafeero surveyors. That upon the death of Yekoyada Busuulwa the second respond called him to carry out a survey as well as subdivision and a meeting was convened on 7<sup>th</sup> February 2018 in the RDC's office where it was resolved that they should proceed to carry out to survey in accordance with a memorandum of understanding (Annexure "FR"). The deponent states that he went ahead and surveyed the land and compiled a Job Record Jacket (JRJ) which was presented to the District Staff Surveyor who forwarded the JRJ to Gomba District Cartographer for plotting and issuing new plot numbers.

On 18<sup>th</sup> March 2020, the two applicants filed affidavits in rejoinder. According to the affidavit in rejoinder of the 1<sup>st</sup> Applicant some contents in the affidavit of the second respond are based on assumptions and that the subdivision plan was never brought to the attention of the Applicants. The 1<sup>st</sup> Applicant deponed that the alleged sales to Nabulayi Enterprises Ltd, Israel Kayonde, Sebugwawo and Nyansio Ssemanda were done by non-

administrators of the Estate of Yekoyada Busuulwa and the said sales could not stop the subdivision in accordance with the memorandum of understanding sanctioned by court. The deponent further stated that the land allocated to Manyi family is encumbered by several occupants including Jane Nansubuga and Israel Nuwagaba and this land is yet to be recovered through a court process. The deponent also indicated that the land allocated to the Mityana family is occupied by Kanzerere who bought from Dr. Nsereko. According to the deponent Manyi and Mityana families were disfavoured in the distribution process by being given land which had squatters. That the surveyor reduced the land by 22 acres which is not true. The deponent stated that she did not attend the family meeting at RDC's office but in paragraph 8 she indicates that she was in the said meeting (affidavit in rejoinder).

The second respondent equally filed an affidavit in rejoinder and stated that the RDC of Gomba forced him to sign a document authorizing subdivision and that the meeting at the RDC's office was not known to the rest of the family members and the 1<sup>st</sup> Applicant never attended the said meeting. The second Applicant in rejoinder stated that the money withdrawn from Post Office belonged to those who withdrew it and the respondents' money is there.

### **Issues**

The following issues were framed for resolution.

- 1) Whether the respondents caveat lodged on land comprised in LRV 1029, Folio 8 also known as Gomba Block 322 and 324 Plot 1 situate at Lugusulu Gomba vide Instrument Number 480058 dated 12<sup>th</sup> December 2012 should be removed?**
- 2) Whether court should appoint a neutral surveyor to subdivide land comprised in LRV 1029, Folio 8 also known as Gomba Block 322 and 324 Plot 1 situate at Lugusulu Gomba?**

On the first issue, Counsel for the Applicants submitted that under Section 139 (1) of the RTA provides that any beneficiary may lodge a caveat forbidding the registration of any person as transferee or proprietor of the estate until after notice of the intended registration or dealing is given to the caveator or unless the caveator consents in writing to the Registrar. According to Counsel, the respondents properly lodged a caveat since they had an interest as beneficiaries. It was Counsel's submission that court has power to remove the caveat under Section 140 (1) of the RTA

where the caveator fails to show court reasonable cause why the caveat should not be removed. Counsel further argued that all the beneficiaries of Yekoyada Busuulwa were represented at a meeting where a memorandum of understanding dated 5<sup>th</sup> August 2016 was signed stipulating how the Estate of the Late Yekoyada Busuulwa was to be partitioned amongst all beneficiaries including the respondents who signed as first and second on the memorandum of understanding. According to Counsel the memorandum of understanding dated 5<sup>th</sup> August 2016 rendered the caveat of 12<sup>th</sup> December 2012 nugatory and in consequential.

Counsel cited the case of **Boynes vs Gathire (1969) EA 385** where it was held that the primary objective of a caveat is to give the caveator temporary protection and it will not be equitable to allow the respondents to sit back and twiddle their fingers for an undetermined future to the detriment of the applicant who as registered proprietor has indicated a need to put to good use.

Counsel for the Applicant submitted that the Respondents caveat was intended to serve a temporary protection and it was overtaken by events upon the signing of a memorandum of understanding.

In reply, Counsel for the Respondents submitted that the Applicants in Annexure "C" indicated that the Respondents lodged their caveat on 21<sup>st</sup> December 2012 contrary to what is claimed in the affidavits of the Applicants since the affidavits in support of the application indicate 1<sup>st</sup> March 2016. That Annexure "C" to the affidavits in support indicates a caveat lodged on 1<sup>st</sup> October 2010 by Kato Lauben, Sarah Nambalirwa and Kaziro Samuel. According to the Respondents' Counsel, the Applicants did not bring to court the caveat which was lodged by the Respondents. Counsel also referred to the various sales which were highlighted in the second Respondents affidavit in reply and indicated that the Applicants did not come to court with clean hands.

### **Resolution by Court**

According to paragraph 8 of the 1<sup>st</sup> Applicant's affidavit in support of the application for removal of a caveat, the Respondents carried out a search through Lukwago & Co. Advocates and established that the Respondents' had lodged a caveat vide **Instrument Number KCCA - 00025794** dated 1<sup>st</sup> March 2016 and a copy of search statement is attached as Annexure "C". The same statement is found in the second Applicant's affidavit in support of the application paragraph 10 thereof. It is the same reference (**Annexure "C"**).

Annexure "C" is a search statement as at 30<sup>th</sup> April 2018 addressed to Alex Turyasiima in respect of LRV 1029 Plot 8, Block 322 and 324 Plot 1 land at Lugusulu Gomba which shows the following encumbrances: -

5 1) Caveat by Lueben Kato, Sarah Busuulwa, Kaziro Samuel registered on 11<sup>th</sup> October 2010.

2) Caveat by Beatrice Busuulwa and Sarah Sewakiryanga registered on 21<sup>st</sup> December 2012.

10 I have not seen the caveat with **Instrument Number KCCA - 00025794** registered on 1<sup>st</sup> March 2016 as stated in paragraph 8 of the 1<sup>st</sup> Applicant's affidavit in support of the application and paragraph 10 of the second applicant's affidavit in support. In paragraph 5 of the second Respondents affidavit in reply, he refers to the caveat he lodged in December 2012. Annexure "C" shows a caveat lodged by Beatrice Busuulwa and Stuart  
15 Sewakiryanga registered on 21<sup>st</sup> December 2012 under Instrument Number 480058. The dates of registration as stated by the Applicants are different and far apart from 21<sup>st</sup> December 2012 as seen from Annexure "C". The Applicants are making reference to a caveat lodged and registered on 1<sup>st</sup> March 2016 vide Instrument Number **KCCA - 00025794**.

20 Given the above information which is very contradictory, the Applicants do not know which caveat they want to be removed. Court does not operate with speculations. That being the case the Applicant's application is dismissed for lack of specific particulars in respect of the caveat which they wanted court to remove. In applications of such a nature, it is the  
25 affidavits which provide the evidence. Much as the Applicants in the Notice of Motion prayed for the removal of a caveat lodged on 12<sup>th</sup> December 2012 vide Instrument Number 480058, the evidence in support of the application is contradictory. In addition, there was no search statement provided in respect of the caveat dated 12<sup>th</sup> December 2012 vide  
30 Instrument Number 480058 in respect of LRV 1029 Folio 8.

In addition to the above, given what has been stated in the affidavits in respect of this application, my opinion is that this is a matter which should have been brought by way of ordinary plaint. There are serious issues which require oral evidence in relation to the documentary evidence on  
35 record. Forinstance, the second Respondent indicated that he was not agreeing to the memorandum of understating while the first applicant indicated that she never attended the meeting at RDC's office. The second Applicant deponed that he was forced by the RDC of Gomba to sign a document authorizing the surveyor to subdivide the land. Such allegations

require proof through examination and cross-examination and cannot simply be solved with reliance on affidavits.

Given the above reasons, I hereby make the following **Orders**: -

a) The Applicants' application is dismissed.

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b) Each party to bear their own costs since the parties are members of the same family and siblings.

Dated at Kampala this 22<sup>nd</sup> day of January 2021.

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**IMMACULATE BUSINGYE BYARUHANGA**  
**JUDGE**

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