

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

**MISCELLANEOUS CAUSE NO.121 OF 2020**

**SIMON KATAABU**

**(Administrator of the Estate**

**of the Late Joseph Kayemba):.....APPLICANT**

**VERSUS**

**1. RICHARD SSIMBWA**

**2. NANZIRI JENNNIFFER):.....RESPONDENT**

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

**Ruling.**

The applicant is the administrator of the estate of the Late Joseph Kayemba by grant of Court,  
and has brought this application under **sections 140 (1), 142, 145 and 188 of the**  
**Registration of Titles Act Cap.230, section 33 of the Judicature Act, section 98 of the**  
**Civil Procedure Act Cap 71 and Order 52 Rule 1 & 2 of the Civil Procedure Rules SI No.71-**  
**1, seeking the following orders;**

1. *The respondents to appear before the court and show cause why their caveat in respect  
of land comprised in **Kyadondo Block 249 Plot 117 and 118** and **Kyadondo Block**  
**250 Plot 201 situated at Bunga** should not be removed or lapsed.*

2. *The respondents' caveat be removed from the above described land.*

3. *The respondents pay compensation/damages to the Applicant for lodging the aforesaid  
caveat without lawful or reasonable cause.*

4. *The respondents be blocked from caveating land comprised in the estate of the Late Joseph Kayemba Gaaga in order to facilitate the effective and complete distribution of the estate to all the rightful beneficiaries of the estate.*
- 5 5. *A consequential order to issue directing the Registrar of Title to remove the caveat and effect changes in the register book.*
6. *Costs of this application be provided for.*

The application is supported by the applicant's affidavit wherein he deposed *inter alia*; that he is  
10 the surviving administrator of the estate of the late Joseph Kayemba Gaaga, having obtained a grant of the same together with the Late Alice Namukasa Gaaga who passed away on 7<sup>th</sup> October, 2018.

That he has on various occasions met with the different beneficiaries of the deceased in respect of the best way of distributing the deceased's estate and he went ahead to file an inventory in the  
15 Family division of the High Court on 24<sup>th</sup> July, 2019.

That he later found out that some of the deceased's properties specifically the suit property which is meant to be distributed to all the beneficiaries was caveated by the respondents.

He further deposed that he wrote to the respondents requesting them to vacate the caveat but they declined to do so. That the respondents' caveats serve no legitimate and justifiable purpose  
20 as they have hindered the complete distribution of the estate of the deceased and yet the respondents who have been equally catered for in the distribution scheme are not solely entitled to the caveated properties.

The respondents opposed the application through the affidavit in reply sworn by Mr. Richard Ssimbwa, the 1<sup>st</sup> respondent. He raised three objections and further deposed that there are many  
25 matters pending in regard to the issues and controversies in regard to the estate that have to be resolved and by trying to distribute the estate, the applicant is jumping the gun. That the caveats are properly on the suit property and should not be vacated.

In rejoinder, the applicant averred that as an administrator of the estate with a valid grant that has not been revoked, he is vested with the duty and power to distribute the estate of the deceased to the rightful beneficiaries.

5 That the pendency of any suit is not a bar to the administration of the estate and neither does it operate as a stay on his prerogative as an administrator and that there is no pending court injunction restraining him from administering the estate for which he was entitled to remove the said caveats, to enable him effectively distribute the estate property to the rightful beneficiaries, including the respondents.

10 That the respondent consented to the grant of letters of administration to the applicant but has astonishingly turned around to defeat the effective administration of the estate thinking he is entitled to the entire estate. That this application would have been avoided if the respondent had accepted to remove the caveats.

**Representation.**

15 The applicant is represented by ***M/s Ambrose Tebyasa & Co. Advocates*** while the respondents are represented by ***M/s Ssemuyaba Iga & Co. Advocates***. Both parties filed written submissions, as directed by this court.

**Consideration of the issues:**

20 I have carefully read and considered the submissions by both counsel, the details of which are on court record and contents of which I have taken into account in addressing the issue of whether or not the applicant merits the prayers sought.

For a caveat to be valid, the caveator must have a protectable interest legal or equitable to be protected by the caveat otherwise the caveat would be invalid. (***Sentongo Produce v Coffee Farmers Limited & Anor vs Rose Nakafuma Muyiisa HCMC 690/99***).

25 It was never in dispute that the parties on either side are all beneficiaries of the estate of the estate of the late Joseph Kayemba Gaaga and are entitled to benefit from the estate, unless and



until the contrary is proved. There is no doubt therefore that the respondents had a caveatable interest in the suit property and consequently the capacity to lodge the said caveats.

It is however noteworthy 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. (*Hunter investments ltd vs Simon Lwanyanga & Another Miscellaneous Cause No. 34 of 2012, See: Hooke vs Holland (1984) WAR 167*).

**Section 180 of the succession Act** as rightly cited by counsel for the applicant 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.

10 In the case of *Maureen Tumusiime v Macario & Anor. [2006] 1 HCB* court declared that ownership of property of the deceased vests in the one being appointed administrator or executor, through a grant of letters of Administration or probate.

Under **section 192 and 193 of the Succession Act**, letters of administration vest in the administrator all rights and interests belonging to the intestate as effectively as if administration  
15 had been granted at the moment after his death. (*Khalid Walusimbi v Jamil Kaaya & Anor (1993) 1 KALR 20*).

At that point in time, the beneficial interest passes and all assets are held by the administrator on bare trust for the beneficiaries, since the administrator's role is merely distribution.

The administrator of an estate can only effectively distribute the said properties to all the  
20 beneficiaries, who include the respondents only if the caveat on any part of the estate is lifted. (*See: Justice Masalu Musenene in Anna Maria Nakamya v Ntandan Pascal Miscellaneous Cause No.14 of 2017*).

In as far as the respondent's complaint to this court that the applicant had intentions of selling off the property is concerned, there is no concrete evidence adduced by the respondents to that  
25 effect.

In any case **section 270 of the Succession Act** stipulates generally that an executor or administrator has power to dispose of property of the deceased as he or she may think fit.

It is trite law that the facts as adduced in affidavit evidence which are neither denied nor rebutted are presumed to be true. **Eridadi Ahimbisibwe v World Food Programme [1998] IV KALR 32**

5 There was no specific reply to the fact that the applicant sought to distribute the estate of the deceased and that the respondents had equally benefited from the earlier distribution of the estate of the deceased. It therefore stands as an admitted fact that the applicant was in the process of effectively distributing the estate of the deceased.

Administration of an estate is an ongoing responsibility until the estate is formerly and fully  
10 distributed, and an inventory account filed.

This court noted that the respondents had filed an application **MA No. 487 of 2020** arising out of **C/S No. 23 of 2010; No. 161 of 2016 and 119 of 2016**. The application was for a review of a consent judgment entered *vide*: **CS No. 23 of 2010**.

Court in its ruling dated 19<sup>th</sup> February, 2021 rejected their prayers on the ground that **CS No.**  
15 **161 of 2016** was pending hearing, while **CS No. 119/2016** had been withdrawn and that therefore there was nothing to review.

I am inclined to agree with counsel for the applicant's submission that the pendency of any suit ordinarily should not be a bar to the administration of an estate, except where court declares so.

With specific reference to the suit pending before the family division, the prayers sought are not  
20 intended to take away but rather to preserve the estate, including the land comprised in **Kyadondo block 250 plots no. 201 and 202**, the subject of this application.

Similarly the prayers sought in the current application are meant to address the delayed administration of the estate occasioned by the caveat. This court also notes that the reasons for lodging the caveat as contained in *paragraph 4* of the Statutory declaration in support of the  
25 application was dated 11<sup>th</sup> February, 2010, wherein the caveator avers:



4. *As a beneficiary of the estate I am concerned about the blackout regarding the administration of the estate I do not know who has the land titles neither have I been consulted about the estate.*

5. *To protect my interest about fraud interest it is proper that the caveat be lodged.*

5 The concerns raised in that application were however addressed by the applicant as a surviving administrator, as per inventory filed in court on 24<sup>th</sup> July, 2019 which the respondents therefore had constructive notice of, but sought not to challenge. The inventory shows that 1<sup>st</sup> respondent is in actual occupation of the property in **plot 201**.

As duly noted by this court, the respondents were not party to the suit pending in the family  
10 division or any suit in any other division, for that matter. The record also shows that the application to lodge a caveat was filed in 2010 (*refer to annexure C2 attached to affidavit in support.*).

The caveat was however registered on 2<sup>nd</sup> March, 2020, some ten years later, when circumstances had already changed ie: a consent had been entered and new administrators  
15 appointed 13<sup>th</sup> March 2013; an inventory filed 24<sup>th</sup> July 2019; and two suits filed in 2016 neither of which the respondents were party to.

In other words, the respondents are intent on retaining a caveat over the estate property relying on circumstances which have since drastically changed, while at the same time seemingly enjoying the full benefits of the undistributed estate.

20 Counsel for the applicant relied on the **Boynes vs Gathure (1969) EA page 385** to support his position that the primary use of a caveat is merely to give a caveator temporary protection.

Therefore it will not be equitable to allow the respondent to sit back and “twiddle” their fingers for an undetermined future to the detriment of the applicant who as the registered proprietor has indicated the need to put the land to good use.

If the respondents were opposed to the grandchildren of the deceased obtaining the grant of letters of administration, this should have been objected to before the consent order was entered, and a subsequent grant (the authenticity of which was also confirmed by court in the ruling dated 19<sup>th</sup> February, 2021 *vide MA No. 487 of 2020.*)

- 5 In view of the above findings, it is my considered opinion that the respondents may have had reasonable cause for lodging the said caveats but the reasons as earlier given for lodging the caveat have since been overtaken by events and cannot therefore sustain the retention of that caveat..

- 10 In the circumstances, I find that this is a fit and proper application to be granted so that the applicant can effectively distribute the estate to all the rightful beneficiaries, including the respondents.

I accordingly allow the application, with costs.

.....

- 15 **Alexandra Nkonge Rugadya**  
**Judge.**

**10<sup>th</sup> March, 2021**