



Further, that the applicants have since not only filed a notice of appeal which was served on the respondents but also requested a certified copy of the proceedings as well as the ruling and they have further applied for leave to appeal.

In addition, that the appeal has a high chance of success and that if the application for stay of execution is not granted the appeal will become nugatory.

By his affidavit in reply, the respondent opposes the application and avers that consequent to the ruling of this court which directed that the caveats be removed, he moved the land office to have the same removed and that the caveats were removed.

That the administrator of the estate together with the beneficiaries to the deceased's estate implemented the distribution of the three properties, some of which were sold off with the consensus of the family. The applicants were made aware of the same through their lawyers and the applicant passed over their beneficial share of the proceeds of the sale which they acknowledged receipt of.

In addition, that there is nothing to stay since the substantive orders of the court were already executed and that while **HCCS No.119 of 2016** was withdrawn in 2018, **HCCS No.2 of 2010** was wholly settled and that it is the suit by which the respondent was made administrator while **HCCS No.161 of 2016** which is still in court does not involve the respondent at all since they are not parties thereto.

**Representation:**

The applicants were represented by **M/s Semuyaba Iga & Co. Advocates** while the respondent was represented by **M/s Ambrose Tebyasa & Co. Advocates**

**Consideration by court.**

I have carefully read the pleadings, evidence and submissions of both parties which I have taken into consideration in resolving this application.

The applicants alluded to the fact that if the orders handed down by this court in **Miscellaneous Cause No.121 of 2020** are put into effect, the applicants will suffer substantial damage and that he has filed an appeal which has a high chance of success and that the same will be rendered nugatory if the instant application is not granted. They further claim that there are several court cases to wit **HCCS No.119 of 2016, HCCS No.161 of 2016 & HCCS No.23 of 2010** which ought to be determined on their merits.

Counsel further cited the case of **P.K Sentongo v Busulwa & Anor CACA No.207 of 2014** for the position that where the subject matter is capable of permanent alienation and capable of causing the appeal to be nugatory, then court will exercise its discretion in favor of the applicant.





He further argued that the subject matter in the instant case is land which is capable of permanent alienation and can therefore cause the appeal to be rendered nugatory and cause the applicants to suffer substantial loss or irreparable injury, and therefore it is in the interest of justice that the application be granted.

- 5 The respondent on his part claimed that pursuant to the orders of court in **Miscellaneous Cause No. 121 of 2020**, the caveats lodged by the applicants in respect of the suit property have since been vacated, some of the properties sold and that the applicants were made aware of the same and their beneficial share of the proceeds handed to them.

10 It is now settled law that facts as adduced in affidavit evidence which are neither denied nor rebutted are presumed to be admitted. (**See: Eridadi Ahimbisibwe v World Food Program & others [1998] IV KALR) 32.**

It therefore follows that failure to file a rejoinder by the applicants would equally suggest that contents of the affidavit in reply, specifically *paragraphs 4, 5, 6, 7 & 8*, were admitted by the applicants.

- 15 Attached to the affidavit in reply of the respondent, is **Annexure "A1", "A2" & "A3"**, copies of search statements from the Ministry of Lands, Housing and Urban Development, dated 1<sup>st</sup> April, 202, which indicate that the property comprised in **Kyadondo Block 249 plots 117 & 118** are registered in the names of Kimbugwe Francis, Ndagire Robinah and Mutebi Ronald and that there are no registered incumbrances in respect of that property; while the property  
20 in **Kyadondo Block 250 plot 201** in the names of the respondent also has no incumbrances; and according to **Annexure "D"**, dated 6<sup>th</sup> June, 2021, the same has since been transferred to one Kalika Ronald who became the registered proprietor on 22<sup>nd</sup> April, 2021.

This could only mean that the judgement and orders of this court referred to in the pleadings that were filed on 4<sup>th</sup> May, 2021 had already been acted upon even before the applicants filed  
25 the instant application. To that extent, I find that the application is moot having been overtaken by events since the caveats on the suit property have already been removed and one of the properties sold off and that the other two properties will also be sold off without going through the process of the execution.

**Black's Law Dictionary 9th Edition page 1090** defines a "moot case" to mean a matter  
30 in which a controversy no longer exists; a case that only presents an abstract question that does not arise from existing facts or rights. (**See also: Justice Okumu Wengi vs. Attorney General of Uganda (2007) 600 KaLR**), where it was held that for an application and reliefs sought to be moot, it means that the remedies sought cannot be realized.

Also in **Human Rights Network for Journalists and Another vs. Uganda Communications Commission, & Others HCMC No. 219 of 2013** court held that a court  
35 of law does not decide cases where no live dispute between parties is in existence.



It does not decide cases or issue orders for academic purposes only. Its orders must have practical effects.

The instant application if granted would be an exercise in futility since the orders for the removal of the caveats on the suit property of this court which the applicants seek to stay were already acted upon, the caveats removed even before the instant application was filed; and the same was clearly brought to the attention of the applicants who even went ahead to receive their share of the proceeds from the sale.

It is therefore apparent that this application for stay of the removal of caveats has been overtaken by events and granting the same would be in vain. As matters stand now, I find nothing to stay.

In the final result, this application is dismissed, with costs.

  
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**Alexandra Nkonge Rugadya**  
**Judge**

**20<sup>th</sup> October 2021.**

Delivered via email





20/10/2021