

1 *Alhaby*

claims in respect of the suit land, which was the beneficial share of George Mukasa Kyagaba (grandson to the late Gawedde). As such the lodging of a caveat in respect of the same land could not be justified.

In addition, that the respondent hugely benefitted from the consent decree which she now seeks to set aside having sold off most of her share which she obtained under the consent decree and that she has no claim of right over the caveated land. That it is in the interest of justice that the application is granted.

The respondent opposed the application through her affidavit in reply. She deponed that after her father's death in 1993, George Mukasa Kyagaba unlawfully, fraudulently and stealthily obtained letters of administration in respect of the estate of the late Benard Kasato Kasirye's estate vide **Administration Cause No.69 of 1995**, without obtaining a certificate of no objection.

That before his death, the late Bernard Kasaato Kasirye filed **High Court Civil Suit No.815 of 1991** through George Mukasa Kyagaba as his next friend and that after the former's death, the latter continued prosecuting the suit as administrator of his estate.

The matter was decided against the deceased's estate and the said George Mukasa went on to prosecute the appeal which was decided in his favor.

In addition, that after obtaining the said grant of letters of administration, George Mukasa then unlawfully, fraudulently and in breach of trust dealt with the estate property. He denied the beneficiaries of the estate their rights and dealt with the estate as though it was his personal property thereby prompting the respondent to file **High Court Civil Suit No.103 of 2007** in a bid to salvage the estate.

That George Mukasa and the respondent executed a consent in respect of the above suit and that it was agreed therein that the respondent would withdraw the suit upon receipt of all her father's assets and that she would give George Mukasa a consolidated total of 28 acres of land comprised in **Kyadondo Block 180 land at Kitukutwe**.

That being aggrieved with the consent order she filed **Miscellaneous Application No.162 of 2012** for a review of the same.

Further, that although Mukasa George was ordered by court to deliver to the custody of court the grant of letters of administration he obtained in respect of the respondent's father's estate, he has not delivered the same and that the respondent has since discovered that her late father's land was transferred to Kulumba Kiingi David who was the estate lawyer and father to the applicants.

That the land was sold and transferred to Kulumba Kiingi David in settlement of George Mukasa's personal debts and that it is a false misrepresentation that the suit land originates from **plot 345, block 180**.

That **Civil Suit No.103 of 2007** as well as the applications thereunder were filed in a bid to challenge the abusive, illegal and unlawful conduct of George Mukasa and the respondent lodged

the caveat in a bid to protect her beneficial interest in the suit land which belonged to her father before it was transferred.

Therefore it is just, fair and equitable for this court to dismiss this application as the procedure by which the late Kiingi obtained the land were not only gross and fraudulent but also illegal and unlawful.

The applicants also filed an affidavit in rejoinder deponed by the 1st applicant contending that the affidavit in reply is argumentative, irrelevant, misconceived and evasive as it does not address the core issue for which the respondent lodged the caveat on the suit property as entailed in her affidavit in support of the caveat.

That the respondent has failed to demonstrate any caveatable interest in the suit land that the applicants' father bought from the estate of the late Bernado Kasirye Kasaato; and that it is in the interest of justice that the application be granted to enable the applicants perform their mandate as administrators of the deceased's estate.

Representation:

The applicants were represented ***M/s Eric – Kiingi & Co. Advocates*** while the respondent was represented by ***M/s Ojiambo Olara Advocates & Solicitors***.

Consideration by court:

I have carefully studied the pleadings and considered all arguments raised by counsel in their submissions on the issues in this application. The core issue for determination by this court is whether the respondent has shown cause why her caveat should not be removed.

It is trite law that for a caveat to be valid, the caveator must have a protectable interest, legal or equitable otherwise the caveat would be invalid. (***Sentongo Produce V Coffee Farmers Limited & Anor vs Rose Nakafuma Muyiisa HCMC 690/99***).

In the instant case, it is not in dispute that the late Kulumba Kiingi David the applicants' late father is the registered proprietor of ***Kyadondo Block 180, plot 1862*** land at Kitukutwe, having purchased the same from George Mukasa Kyagaba, the administrator of the estate of the late Bernard Kasato Kasirye and father to the respondent.

The respondent on her part alleges that she lodged the caveat in a bid to protect her beneficial interest in the suit land. That the George Mukasa Kyagaba illegally dealt with her late father's estate which she is trying to salvage and that she even filed ***MA No.0162 of 2012*** seeking to set aside the consent entered into with the said George Mukasa Kyagaba.

This court noted the application arose from ***Civil Suit No. 103 of 2007***, not ***107 of 2009*** as indicated in parts of the applicant's pleadings.

In a supplementary affidavit in support of the Notice of Motion, George Mukasa Kyagaba stated that he is the grandson of the late Isaya Gawedde who was the original owner of the land comprised in ***Kyadondo Block 180 at Kitukutwe*** and that Kasaato Kasirye who was the eldest and only

surviving son of Isaya Gawedde obtained a grant of letters of administration for his estate. Upon Kasaato Kasirye's demise, George Mukasa obtained letters of administration for his estate.

In *paragraph 3* of the supplementary affidavit by George Mukasa, he admitted that he obtained letters of administration for the estate of Bernard Kasaato in error since Kasaato Kasirye never
5 owned any property but was mere administrator of Gawedde's estate.

Accordingly, that on 11th July, 2008, this court having revoked his grant of letters of administration to the estate of Kasaato Kasirye instead issued to him a grant of letters of administration for the estate of late Isaya Gawedde.

As indicated by the sale agreement dated 8th September, 2006, the late Kiingi had already obtained
10 an equitable interest in **plot 345 (mother plot)** after purchasing some land from George Mukasa, the administrator of Kasaato Kasirye's estate and this was before **Civil Suit No. 103 of 2007** was instituted by the respondent against the administrator.

Subdivisions had been made out of **plot 345** being the mother title, to create **plot 849**, further subdivided to create **plots 1860-1862**. **Plot 1862** was registered in the names of the late
15 Kulumba Kiingi in 2012 and this was after the suit filed against George Mukasa as an administrator had been concluded following a consent decree signed between the respondent and the administrator on 13th November, 2009.

Among the terms spelt out in the consent, George Mukasa had to surrender to the respondent all the property, with the exception of, (for the purposes of this application): 200 acres of the land
20 situate in Kitukutwe, **Block 180**; land comprising 27 acres; and one acre of land where George Mukasa's house and shop at Kitukutwe were located, among others.

After the consent was filed a memorandum of understanding was entered between the respondent and George Mukasa as the administrator of the Kasaato's estate in 2011. By that time Kiingi was already in possession of the suit land as deponed by George Mukasa in *paragraph 8* of the
25 supplementary affidavit, which assertion was not contested by the respondent.

In *paragraph 10* thereof, the respondent is said to have given George Mukasa 4 out of the 15 land titles for land at Kitukutwe including the mother **plot 345**. From **clause No. 1** of the MOU, the respondent had also acknowledged receipt of some properties and transfer forms for the estate from the administrator.

It is important to note that what was agreed upon and surrendered to the respondent however
30 excluded the plots which were created out of **plot 345**, including **plot 849** out of which **plot 1862 (suit land)** had been carved out.

Thus also as noted by this court, by the time the MOU was signed in 2011, **plot 1862** had already been created and George Mukasa Kyagaba as administrator of the estate of Kasaato had been
35 registered on it as early as 2010. In 2012 which was after the signing of the MOU, the late Kiingi's equitable interest was registered in his names.

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From the MOU the respondent had even received transfer forms for about 63.67 acres from **Block 180** which was given to her as part of her father's estate, and presumably therefore separate from that of her grandfather which George Mukasa Kyagaba was entitled to administer as per grant to him issued on 11th July, 2008.

- 5 George Mukasa in *paragraph 4* of his supplementary affidavit avers that the grant issued to him by court in respect of Kasaato's estate was revoked by court and a fresh grant issued to him in respect of the estate of Isaya Gawedde.

Whether or not therefore at the time the consent and MOU and transfer were entered between the said administrator and respondent the former could validly deal with the estate since as noted the
10 letters of administration for Kasaato's estate had been revoked, was another matter which was not raised as an issue in this court.

What is clear is that he had the authority to deal with Gawedde's estate after the grant was issued to him in 2008 and that it became necessary at that point to separate the property of the two estates.

- 15 Information about the application for review of the consent and reasons why, after endorsing it and participating in the process of its execution the respondent decided to challenge it, is rather scanty for according to the applicant, the matter was still pending. Suffice to note that the respondent was a party to both the consent and MOU made thereafter in 2011 which reinforced the consent.

- 20 This court however landed on an order: vide **MA No. 0162 of 2012** made by this court in the family division on 21st November, 2017 which the parties had been directed by court to have the said consent fully executed.

This by implication meant that George Mukasa had all the necessary powers as the administrator to deal with the estate, until after the conclusion of the sharing of the recovered properties as
25 directed by court.

He still therefore had the capacity to sell and transfer the property as he did in respect of the suit property for whatever had been left of the late Kasaato's estate for him to register, but also in respect of Gawedde's estate as administrator.

- Thus between 2009 and 2012 when the transfer was made to the late Kiyingi, this court finds
30 nothing that should have prevented the administrator from transferring **plot 1862** to the late Kiingi who as early as 2006 had already acquired equitable interest, even before the suit was filed, before the consent entered and before it was challenged.

- The respondent went ahead and acted on the strength of the consent decree and MOU, created subdivisions and titles (as shown in the area schedule annexed to the affidavit in support of the
35 application), made numerous transfers, a number of these in the names of one Omalla Deogratiuous.



She did not refute the allegation that she had benefitted out of the said consent decree and MOU. 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**).

5 While she was entitled therefore to lodge a caveat in respect of her father's estate, a part of which had been handed over to her by the administrator of that estate in execution of the consent, it is clear that she had no caveatable interest in the rest of the property which belonged to other beneficiaries of the estates, and which remained under the hands of the administrator as a trustee.

10 With all due respect therefore, following the above trend of events, **plot 1862** had not been a subject of the suit under which the consent was made. The late Kiingi was not a party to the suit and consent and in any case, he purchased the suit land in 2006 from a person who had authority to deal with the land.

15 All property of the intestate devolves upon the personal representative of the deceased upon trust for those persons entitled to the property (**section 25 of the Succession Act**). For all purposes, the administrator of an estate is therefore the deceased's personal representative for all purposes and all property of the deceased vests upon him. (**Section 180 of the Succession Act**). An administrator of the estate therefore also has powers to dispose of the property in such manner as he or she may think fit. (**section 270**).

20 The administrator's failure to file an inventory and surrender letters of administration for her father's estate was a matter between the administrator and the beneficiaries. It did not affect the late Kiingi's rights as a purchaser.

Such omission and pending actions by the administrator which were not attributed to Kiingi could not therefore justify the caveat lodged long after the transfer had been lawfully made to him and after taking possession of the land which he had enjoyed without interruption.

25 The doctrine of estoppel by conduct prevents a party against whom it is set to deny the truth of the matter. (**section 114 of the Evidence Act, Cap. 6**) and **Pan African Insurance Co (U)Ltd vs International Air Transport Association, Civil Suit No. 667 of 2003**.

30 Since the respondent had relinquished her claim in the mother **plot 345** later subdivided into **plot 849** out of which the suit land had been created, and had even benefitted from the sharing agreement she cannot now be seen to reversing the transactions some of which affected third party rights which she had acquiesced to, directly or indirectly. She seems therefore bent on reintroducing matters that had already been dealt with and concluded and in relation to which this court would be *functus officio*.

35 In light of the above, the respondent can only hold interest in what rightfully belonged to her father's estate. It follows therefore that she has no caveatable interest in the suit land which was properly disposed of by the administrator in 2006.

According to **Segirinya Gerald versus Mutebi Innocent H.C.M.A No.081 of 2016**,

"The primary objective of a caveat is to give the caveator temporary protection. It is not the intention of the law that the caveator should relax and sit back for eternity without taking positive steps to handle the controversy, so as to determine the rights of the parties affected by its existence."

5 After filing the caveat in 2017 the respondent sat back and twiddled her fingers without taking any further action to challenge Kiingi's interest.

In light of the above, the applicants have satisfied court that the continued existence of the caveat on the suit land have affected their rights over the land on which the caveator had no valid interest.

This application succeeds in the following terms:

10 ***1. An order issues directing the Commissioner for Land Registration to remove the caveat lodged by the respondent on land comprised in Kyadondo Block 180 Plot 1862;***

2. Costs awarded to the applicants.

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I so order.

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Alexandra Nkonge Rugadya

Judge

31st May, 2022.

Delivered by email
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2/6/2022