

**MISCELLANEOUS CAUSE NO.077 OF 2022**

## VERSUS

#### 4. HAPPY NAKAYE AMINA:.....RESPONDENTS

***Ruling.***

**f. Costs of this application be provided for.**

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*Anthony*

Kezia Nanyonga, and that upon his demise, she was appointed the sole administrator of the deceased's estate.

That while the applicant is supposed to file an inventory within six months from the date of appointment as the administrator, immediately started executing my duties as administrator of the estate including but not limited to the payment of school fees for the children left by the deceased and that on 6<sup>th</sup> April 2022, she was registered as the proprietor of **Kyadondo Block 205 plots 954, 888, 887 land at Bunga Hill Mengo District** (hereinafter referred to as the 'suit land') so as to enable her to perform her administrative duties.

That the applicant has been in constant negotiations with various creditors including **M/s Centenary Bank** which advanced a loan to the deceased as well as Nakasero Hospital which treated him until his death and she has been making periodic payments to service the mortgage the deceased left on **Kyadondo Block 250 plot 954** from the income earned by the estate.

That on 9<sup>th</sup> May 2022, the respondents jointly lodged a caveat on the suit property which is under the applicant's possession, and that the said caveat has greatly interfered with the applicant's duties as administrator as she is unable to generate income and revenue that would have been of interest to all the beneficiaries of the estate and settle the creditors to the estate.

In addition, the applicant has been unable to effectively administer the estate, or complete its distribution, and although she has requested the caveators to acknowledge school fees payments for their children as per the income earned from the estate, the same has been rejected in view of the distribution of the deceased's property so as to enable them to selfishly gain a share of the estate contrary to the deceased's will and wishes.

The respondents opposed the application through the affidavit in reply of Nakyeeyune Monica, the 1<sup>st</sup> respondent, wherein she stated *inter alia* that they have since filed **Miscellaneous Application No.955 of 2022** arising out of **Administration Cause 1283 of 2021** against the applicant before the High Court Family Division seeking orders that the grant of letters of administration to be varied by adding the respondents herein as the next friends of the five minors, who are also beneficiaries of the late Samuel Mugabi, owing to the mismanagement and the administrator being inconsiderate of the interests of the other beneficiaries of the deceased's estate.

That the interim inventory filed by the applicant is filled with falsehoods because she did not include some of the deceased's property, nor did she show how the same was distributed by her as the sole administrator of the estate since all the other beneficiaries are minors and that in their application, the respondent's aver that the applicant has failed to execute her administrative duties owing to the high level of discrimination exhibited because the estate

has only benefited the applicant and her two children while side-lining the other five children sired by the respondents.

It was also averred that the applicant only makes payment of school fees for her two children while the welfare, maintenance, and school fees of the other five children mothered by the respondents, and that the applicant's allegations that she has been in negotiations with various creditors including Centenary Bank and Nakasero Hospital and making periodical payments thereto, are not true since there was no evidence of the creditors, or the alleged payments attached on the inventory filed in the Family Division.

In addition, that while the income generated by the estate can sustain the proper running of the estate as well as the beneficiaries thereof, the applicant has failed to do so as she spends all the income on herself and a few select beneficiaries at the expense of the others.

That accordingly, the caveat in issue was lodged in good faith by the respondents as the same is intended to protect the estate from being wasted and to ensure that the interests of the five beneficiaries of the deceased who are still minors and school going are protected.

Further, the lodging of the caveats in issue was triggered by the applicant's conduct of concealing information about properties such as the deceased's properties, which are believed to have been sold off, and the proceeds channeled to benefit the applicant and her children to the exclusion of the other beneficiaries.

That the caveats on **Block 250, plots 887, 888, & 954** land at Bunga hill have not in any way interfered with the administration of the deceased's estate since the land in issue has a hotel thereon, which has continued business and earned an income despite the respondent's caveats being lodged.

That the said allegations by the applicant are mere excuses by the applicant who does not want to equally distribute the proceeds from the estate, which she uses for her own personal developments and her children.

That while the applicant's previous attempts to give the respondents school fees were a mere cover-up by the applicant owing to the fact that the proposed monies could barely cater for school fees, maintenance, and welfare of the respondents' children, the applicant spends over seven million shillings in school fees per term for her children which is unfair to the respondents' children who are also beneficiaries of the deceased's estate.

That the caveats in issue should not be vacated by this court until the determination of the respondents' application in the High Court Family Divisions to be added as next friends of the other five beneficiaries, the intention of which is to protect the estate from being depleted and/or mismanaged and protect the interests of the other 5 beneficiaries, thus it is in the interest of justice and fairness that this court does not grant the applicant's application.



The applicant also filed an affidavit in rejoinder wherein she stated that **Miscellaneous Application No.955 of 2022** arising out of **Administration Cause No.1283 of 2021** is not attached to the affidavit in support of this application, nor has the same been served on her, or her lawyers, thus there is nothing on record to prove the existence thereof and that the pendency of a suit does not bar the administration of the estate, nor does it operate as a stay on her prerogative as an administrator of the estate of the deceased.

That since there is no court injunction restraining her from administering the deceased's estate, this court is entitled to order the removal of the caveats in issue to enable the respondent to effectively distribute the estate to the right beneficiaries,

That the respondents failed to furnish proof of the alleged falsifications of the inventory or how she failed to execute her duties as the administrator and that because she has a grant of letters of administration which has never been contested, the proper procedure is for them to challenge the same in a court of law rather than lodge caveats on the estate land in a bid to selfishly gain a share from the estate and undermining the applicant's work as an administrator.

That the respondents have also wilfully neglected or refused to acknowledge any efforts in contributing towards the school fees payments for their children as per the income earned by the estate thereby prompting the respondent to notify them of the availability of school fees, which notifications have also been neglected by the respondents, and that the respondents have failed to demonstrate reasonable cause why their caveats should not lapse.

The applicant also denied the allegations of concealing the estates' properties or assets. In addition, she stated that all the deceased's properties' vest in her since she has a valid grant of letters of administration therefore she has the authority to manage and distribute the estate as mandated by law and that the existence of the caveats lodged by the respondents interferes with her duties as administrator.

That the respondents failed to adduce any evidence of mismanagement of the income earned by the estate to the exclusion of other beneficiaries and that while the caveats in issue were lodged in a selfish attempt to compel the applicant to sell the deceased's property and distribute the proceeds among themselves, the respondents have failed to prove justifiable reasons for lodging the caveats lodged in the false, misguided belief, assumption that they are protecting the minor children since the applicant has no plans of selling the property at the expense of the beneficiaries.

**Representation:**

The applicant was represented by **M/s JB Mudde Advocates** while the respondents were jointly represented by **M/s Ssekya Matovu & Co. Advocates and M/s Ssemwanga**



**Muwazi & Co. Advocates.** Both sides filed written submissions in support of their respective clients' cases as directed by this court.

**Consideration by court.**

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.

It is trite law that 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.

**(Miscellaneous Cause No.77/92 Mrs. Catherine Serwadda and Anor. Vs. Michael Nsereko and Anor).**

The respondents in their affidavit in reply averred that they had since filed **Miscellaneous Cause No.955 of 2022** arising out of **Administration Cause 1283 of 2021** in their capacity as the next friends, to be added to the grant of letters of administration of the estate of the late Samuel Mugabi. They also sought a fresh grant of letters to be made to the applicant herein and the respondents as next friends to be granted.

It is also clear from the said application that the respondents are not satisfied with the inventory filed by the applicant. They seek an order directing the applicant in this cause to file the correct inventory; and in addition, a permanent injunction restraining the applicant herein from dealing in the estate property.

The application pending before the family division of the High Court which the applicant claims was never served to her clearly raises issues pertaining to the distribution, and management of the estate of the late Samuel Mugabi. It is not for this court to determine whether or not it was duly served to the applicant. What is clear is that it is pending before another court. It is the opinion of this court that the issues raised in this application can only be concluded after the determination of the matters pending before the Family division.

**Section 98 of the Civil Procedure Act** saves the inherent powers of court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court.

Accordingly, the issues raised in this application shall be heard and dealt with by the family division where all the matters pertaining to the administration and distribution of the estate of the estate of the Late Samuel Mugabi are to be concluded.

It is therefore the order of this court that the caveats lodged by the respondents on the land comprised in **Kyadondo Block 205 plots 954, 888, 887 land at Bunga Hill Mengo District** are to be maintained until further orders are made under **Miscellaneous Cause No.955 of 2022**, pending before the High Court Family Division.

Each party to meet its own costs of this application.






I so order.

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5 **Alexandra Nkonge Rugadya**

**Judge**

**25<sup>th</sup> November, 2022.**

Delivered by email  


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25/11/2022