

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
MISCELLANEOUS CAUSE NO. 10 OF 2022
(Arising from Civil Suit No. 101 of 2018 and Administration Cause No. 234 of
2013)

5 KAKIKA ABDU
(Administrator of the EstateAPPLICANT
of the Late Musa Katende)

VERSUS

10 1. LEO LULE KIMALEMPAKA }
2. LUTETE MOHAMMED }RESPONDENTS
3. KIRINYA MUKHTAR }

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

15 Ruling

The applicant brought this application by way of Notice of Motion under **Sections 140(1), 142, 145 and 188** of the Registration of Titles Act, **Section 33** of the Judicature Act, **Sections 34 and 98** of the Civil Procedure Act and **Order 52 Rules 1 and 2** of the Civil Procedure Rules against the respondents seeking the
20 following orders;

- a. That the 1st and 3rd respondents appear before this Honorable court and show cause why their caveats they lodged in respect of land comprised in Mawokota Block 113, Plots 124, 125, 126 and 127 should not be removed or lapsed.
- 25 b. That the 1st and 3rd respondents' caveats be removed from the above described land.
- c. That the respondents pay compensation/damages to the applicant for lodging the aforesaid caveat without lawful or reasonable cause.
- d. That the respondents be blocked from caveating land comprised in the
30 Estate of the late Musa Katende in order to facilitate the effective and complete distribution of the Estate to all the rightful beneficiaries of the Estate of the deceased.
- e. A consequential order to issue directing the Registrar of Titles at Mpigi Zonal office to remove the caveat and effect changes in the Register Book.
- 35 f. The costs of this application be provided for.

The application was supported by an affidavit sworn by the applicant and the grounds briefly are as follows;

- 5 1. That I am the lawful appointed Administrator of the Estate of the late Musa Katende formerly of Kololo Mawokota Mpigi and currently the registered proprietor of Plots 124, 125, 126, and 127 land at Mawokota Mpigi.
2. That I lodged a Civil Suit against Ssemwogerere Swaib, Mukasa Baseka Jamil, Sekamate Adam and Semakula Hussein for fraudulently transferring Plots 124, 124, 126 and 127 that were part of the estate of the deceased into their names.
- 10 3. That court on the 16th of December 2020 found out that it was true the said fraudulently transferred the said plots into their names and ordered their names to be cancelled on the title.
4. That court further ordered that the Estate be distributed and an inventory be filed within six months from the date of judgment which has not been
- 15 5. That the process of distributing the Estate is ongoing after the family and all the beneficiaries convening a meeting and agreed on the distribution schedule.
6. That the applicant later learnt with shock that the respondents had
- 20 7. That it is in the interest of justice and to the prejudice of neither party here in if this application is granted.

The application was opposed by an affidavit in reply for the 1st and 2nd respondents sworn by the 1st respondent also holding powers of attorney for the

25 2nd respondent and averred that they have interest in the suit land and the caveat was lodged to protect legitimate interest in the estate. That they were allocated this land under the judgment in Mpigi High Court Civil Suit No. 101 of 2018. And the application raises no grounds that warrant the removal of the caveat, therefore, it should be dismissed.

30 The 3rd respondent also opposed the application and in his affidavit in reply averred as follows under paragraphs 5, 7, 11, and 12;

5. That in reply to paragraphs 4, 5 and 6 of the applicant's affidavit in support, I

sate that my grandfather left two estates, one at Nakirebe which was our ancestral home which was maliciously destroyed and sold without my knowledge

35 and the second estate is the subject of this matter where we have our family

burial place and family house for the children of the late Ahmed Nkuubi my father and currently it is under great threat of being disposed of by the applicant herein.

5 7. That in reply to paragraph 9 of the affidavit in support, I state that the estate of my late grandfather was to be distributed according to Islamic sharia law according to what was agreed on in the family meeting and me and my other siblings were to get 19.5 acres of the estate, however, the applicant in conniving with other people were giving us only 14.5 acres contrary to the Islamic laws of inheritance that had been agreed on robbing me and my siblings of close to 5
10 acres.

11. That in further reply to paragraph 19 of the affidavit in support of the application, among the issues was the issue of giving 1 acre of my late grandfather's estate to the surveyor which I denied and proposed we give him money instead but the applicant totally objected to this and I was suspicious
15 about what plans the applicant had with a stranger. Also, there is another person referred to as "investor" that was among the people to be given part of my grandfather's estate whom I am not even aware of and what exactly he invested in to be entitled to our late grandfather's estate. All the above prompted me to lodge caveats to protect my interests as a beneficiary to the estate of my late
20 grandfather.

12. That I further state that I have no problem with removing the said caveats however, I have to be first satisfied with the way the applicant intends to distribute my late grandfather's estate so as to benefit all of the beneficiaries of my late grandfather.

25 The applicant filed an affidavit in rejoinder whose grounds I will not reproduce here.

Representation:

Mr. Mugerwa Nazario appeared for the applicant while Mr. Kigundu Jackson appeared for the 1st and 2nd respondents. The 3rd respondent was unrepresented.
30 Only the applicant, 1st and 2nd respondents filed written submissions.

Submissions:

Applicant's submissions:

5 It was submitted for the applicant that the caveats were lodged in bad faith to sabotage the administration of the estate of the deceased as the applicant was ordered to distribute the said estate vide Civil Suit No. 101 of 2018. That the applicant has been prevented from distributing the estate due to the caveats and the 2nd and 3rd respondents were part of the family meetings that agreed to the distribution schedule that was agreed upon. That the applicant has been prevented from discharging his duty as an administrator due to the said caveats.
10 That the 1st and 2nd respondents claim that they were allocated 7.08 acres in Civil Suit No. 101 of 2018 yet the said suit was not about distribution and the 2nd respondent was party to the suit. That the applicant successfully prosecuted the suit on cancellation of titles that were fraudulently transferred by the defendants in civil suit No. 101 of 2018.

15 Counsel added that even though the respondents have equitable grounds to lodge the caveats, they do not have reasonable causes to do so and caveats are temporary relief. **(See: Hunter Investments Ltd vs. Simon Lwanyanga & Edith Lwanyanga, Miscellaneous Cause No. 0034 of 2012, also, cited with approval the case of Boynes v. Gathure (1969) E.A Page 385)**. That it is therefore, not the
20 intention of the law that the caveator should relax and sit back for eternity without taking positive steps to handle the controversy.

Counsel noted that the 1st respondent lodged his caveat on the 1st day of February 2022 and the 3rd respondent lodged his on the 23rd November 2021 till to date about 6 months since and they have not done anything not even to challenge the
25 distribution or the powers of the Administrator. And that **section 140** of the Registration of Titles Act empowers this court to revoke a caveat if the caveator fails to show cause. That in the circumstances, the respondents in this case have no reasonable cause why the caveats were lodged and should therefore be removed.

30 1st and 2nd Respondents' submissions

Counsel submitted that they oppose the application on ground that the applicant distributed the estate contrary to the known principles of the law and practice. That the applicant chose to distribute to persons not listed as beneficiaries and has not distributed to the 2nd respondent who is entitled to 7.08 acres as per the

judgment of Lady Justice Kakooza Sabiiti at page 11 and as a son to the late Musa Katende. That the omission on the distribution list creates a caveatable interest and the caveat was lodged by a beneficiary of the estate. Thus, the application should be disallowed and the applicant be directed to distribute the land to the lineage of Musa Katende to wit; Ahmed Nkuubi, Hamida Nalweyso, Sulaiman Mukiibi, Namala Joweria and Mohammed Luteete Semwogerere who are the direct beneficiaries of the estate of the late Musa Katende.

Counsel concluded that the caveats be removed upon the distribution and that no costs should be awarded to the applicant as it was his own making.

10 **Analysis of court:**

I have carefully read and considered the submissions by counsel for the applicant and the 1st and 2nd respondents, the pleadings, and affidavits for and against the application and their annexures of which I have taken into account in resolving this application.

15 **Section 139** of the Registration of Titles Act provides that;

“(1)Any beneficiary or other person claiming any estate or interest in land under the operation of this Act or in any lease or mortgage under any unregistered instrument or by devolution in law or otherwise may lodge a caveat with the registrar in the form in the Fifteenth Schedule to this Act or as near to that as circumstances permit, forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after notice of the intended registration or dealing is given to the caveator, or unless the instrument is expressed to be subject to the claim of the caveator as is required in the caveat, or unless the caveator consents in writing to the registration.”

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 & Coffee Farmers Limited v. Rose Nakafuma Thijusa HCMC 690/99**).

As rightly cited by counsel for the applicant **Section 180** of the succession Act 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. So in this case the applicant is the legal representative of the late Musa Katende’s estate.

It was never in dispute that the respondents are all beneficiaries of the estate of the late Musa Katende. 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.

- 5 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. **(See: Hunter Investments Ltd vs. Simon Lwanyaga & Edith Lwanyaga, (Supra)).**

10 In the instant case the 1st and 3rd respondents lodged caveats to protect their interests as beneficiaries of the estate of the late Musa Katende claiming that the applicant had been distributing the said estate in contravention of the law and that the 2nd respondent had not received his rightful share as was alluded to in the judgment in Civil Suit No. 101 of 2018 measuring 7.08 acres.

15 I have read the judgment in Civil Suit No. 101 of 2018 and it was Lady Justice Kakooza Sabiiti's observation at page 11 under the resolution of issue 3 and I quote;

20 *“A further review of the minutes of the family meeting held on 20th September 2014 organized by the Administrator and attended by the beneficiaries shows that the children/lineage of Ahmed Nkuubi were entitled to 18.8175 acres (comprising of 7.825 hectares that he shared, 7.08 acres that were for Luteete and 3.9125 acres that Hamida Nalweyso agreed to exchange with her land at Nakirebe).*

25 *The above shows that all the children of the late Ahmed Nkuubi have a limited share of the suit land and are all not entitled to all of the 31.3 acres since their father was only one of the five children of Musa Katende.”*

30 From my reading of this observation, the Lady Justice noted that the children of the late Ahmed Nkuubi all had distinct shares as per the minutes of the family meeting held on 20th September 2014 organized by the Administrator and attended by the beneficiaries. In particular the 2nd respondent had 7.08 acres, on which I believe he now lays his claim. Not that the suit decreed the 2nd respondent the said acres of land. These acres were agreed upon during the family meeting. Therefore, the 2nd respondent cannot say that they were decreed to him in civil suit No. 101 of 2018.

35 The 1st and 3rd respondents having lodged caveats one in 2021 and another in 2022; no action has been taken ever since until this application was lodged. The said respondents did not legally challenge the distribution of the estate but rather

sat back. In the case of **Boynes v. Gathure (1969) EA page 385** it was stated that a caveat is merely to give a caveator temporary protection.

5 The applicant contended that the process of distributing the Estate is ongoing after the family and all the beneficiaries convening a meeting and agreed on the distribution schedule.

Whereas the applicant attached a list of the people that attended he family meeting said to have been held on the 13/11/2021 attended by the 2nd and 3rd respondents who allegedly did not raise the issues as raised in the affidavits opposing the application. The applicant however, did not attach the said meeting's minutes for this court to look at. This court therefore is unable to tell
10 what was the extent of the distributions agreed upon by the attendants among whom were the 2nd and 3rd respondents.

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

It is my considered view that the respondents have genuine claims and caveatable interests however; the applicant will not be in position to properly dispose of the estate unless the caveats are removed. The respondents stated that they are
20 willing to remove the caveats upon satisfaction of how the estate is distributed. This however, will not be possible when the caveats are still in place.

I accordingly allow this application and order that the caveats as lodged by the 1st and 3rd respondents be removed on condition that the applicant distributes the estate as per the agreed upon distribution list in family meeting held on 20th
25 September 2014; and if indeed there were other minutes of a meeting held on the 13/11/2021 taking precedence over the earlier minutes and there is no protest from the beneficiaries the same may be followed.

And an inventory be filed in this court within a period of three months. The said minutes be furnished in this court with signatures of the beneficiaries appended
30 as proof that those were the agreed upon resolutions pertaining distribution to the beneficiaries in the family meeting.

I will make no order as to costs, each party will bear their own costs. I so order.

.....

OYUKO ANTHONY OJOK

5 JUDGE

07/08/2022