

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MPIGI**  
**MISCELLANEOUS CAUSE NO. 006 OF 2022**

1. TEDDY NAKATO NDAGIRIZI

5 2. DEO KAGGWA KITENGEJJA .....APPLICANTS

3. HENRY WALUSIMBI

**VERSUS**

PAUL KIWENDO.....RESPONDENT

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

**Ruling**

15 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 and Section 98 of the Civil Procedure Act and Order 52 Rules 1 and 2 of the Civil Procedure Rules against the respondent seeking the following orders;

- 20 a. The respondents to appear before the court and show cause why his caveat in respect of land comprised in Mawokota Block 81 Plot 31 at Mbale measuring approximately 8.10 acres.
- b. The respondent's caveat be removed from land comprised in Mawokota Block 81 Plot 31 land at Mbale.
- c. Consequential order to issue directing the registrar of titles to remove the caveat and effect changes in the register book.
- d. The costs of the application.

25 The application was supported by the 1<sup>st</sup> applicant's affidavit sworn on the 16<sup>th</sup> of March 2022 and the grounds briefly are as follows;

1. The applicants are beneficiaries with exception of the 3<sup>rd</sup> applicant and administrators of the estate of the late Yowana Mabikke Kato having obtained the same on 1<sup>st</sup>/09/2003.

2. On 7<sup>th</sup> December 2017 one of the administrators of the estate of the late Yowna Mabikke Kato died.

3. That in the process of administration it was discovered that the title of land comprised in Mawokota Block 81 Plot 31 land at Mbale was caveated by the respondent.

4. The administrators wanted to distribute the estate include land comprised in Mawokota Block 81 Plot 31 land at Mbale to its right full beneficiaries but were constrained due to the fact that the respondent had caveated the land.

5. It is in the interest of justice that the application be granted.

The application was opposed by an affidavit in reply sworn by the Matovu Elias and the pertinent grounds are as follows;

5. That the contents of paragraph 2, 3, 4, 5, 7 of the applicant's application are within the respondent's knowledge and in specific reply the said Letters of Administration are being challenged in High Court of Uganda at Kampala, family division, Civil Suit No. 175 of 2021 and which matter is in the know of the applicants and their lawyers M/s Mudawa & Kyogula Advocates & Multi-legal consultants.

6. That the contents of paragraph 6 of the applicant's application are disputed and in specific reply, the applicants are under a scheme to deprive the rightful beneficiaries under Succession Register No. 18/4205 of Yowana Kato Ssalongo from which the respondent's father Late Kiwendo Leonard Charles derives his interest.

7. That in further reply, the contents of paragraph 8 are denied in toto and in specific reply, the respondent has shown justifiable cause in Lodging the caveat as a beneficiary to the said estate as a grandson of Yowana Mabikke Ssalongo and son of the late Kiwendo Leonard Charles and where he derives his beneficial interests which fact is known by the applicants in paragraph 9.

8. The contents of paragraph 9 are within the respondent's knowledge and in specific reply the late Kiwendo Leonard derives his interest of four acres comprised in part of mawokota Block 81 Plot 31 as per the Succession register No. 18/4205 and family of late Kiwendo Leonard Charles has their residential home on the land on which Mrs. Kiwendo Zalwango Proscovia resides and utilizes their land by cultivating on the same 4 acres and a portion of the land has a family grave yard and other beneficiaries.

9. That in further reply to paragraph 10 and 11, the applicants and their lawyers are aware of the ongoing case in the family division of the High Court as above mentioned and are using this as a scheme to abuse court process by creating multiple suits in regard to the suit land comprised on Mawokota Block 81 Plot 31 and are aware that the respondent is a beneficiary to the said estate as a grand son of Yowana Mabikke Ssalongo and son of the late Kiwendo Leonard Charles.

11. That the application is lacking in content to meet the grounds for the removal of a caveat on the said land comprised in Mawokota Block 81 Plot 31.

And the supplementary affidavit as follows;

3. That in further reply to paragraph 10 and 11 the applicants filed a written statement of defence in High Court of Uganda, Family Division, Civil Suit 175 of 2021, through their same lawyers Mudawa & Kyogula Advocates & Multi Legal consultants and hence aware that the suit land comprised on Mawokota Block 81 Plot 31 is disputed thus application is brought in bad faith since the applicants got their beneficial shares in the estate of Yowana Mabikke Ssalongo.

4. That in further reply to paragraph 2, 3, 4, 5, 7, 8, 9, 12 the respondent's father, the late Kiwendo Leonard Charles left a will dated 21<sup>st</sup> January 2017 describing the 4.1 acres out of the land comprised on Mawokota Block 81 Plot 31 hence the need to protect the beneficial interest of the respondent and his family.

5. That in further reply to paragraph 10 and 11, the applicants and their lawyers are aware that the High Court of Uganda at Kampala, Family Division has even conducted locus visit on the suit land located at Bunamweri Vilage, Mpigi Town Council.

6. That in further reply to paragraph 9 the suit land measuring 3.2779 hectares/8.09 acres was already distributed by virtue of the succession register 18/4205 to three beneficiaries being Leonard Charles Kiwendo who was given 4.1 acres, Mary Laetitia Mbejja who was given 3 acres, Regina Nanozi who was given 1 acre, thus the suit land does not form part of what the applicants are administering.

The 1<sup>st</sup> applicant also swore an affidavit in rejoinder to the affidavit in reply and the supplementary affidavit however, I will not reproduce the grounds here.

## **Representation:**

Mr. Patrick Mukasa appeared for the applicants Nehima Silversson together with Kamya Paul appeared for the respondent.

## **Submissions:**

5 Counsel for the application submitted that the applicant is one of the Co-Administrators of the estate where of one administrator had died, leaving the three of them. In the course of Administration, they found out that one of the properties was caveated. That even the title pertaining some of the land were missing. The father of the respondent was still alive and that the land belonged to  
10 their father. That the existing Administrator wanted to distribute the property to the rightful beneficiaries. The respondent is the grandson to the late Yowana Kato. That the father of the one who put a caveat is dead but one of the beneficiaries is a live.

Counsel added that Block 81 Plot 31 Land at Mawokota in Mpigi is not yet  
15 divided.

The father of the caevator sat in a meeting with other beneficiaries and agreed verbally to give 2 acres to the other sisters in case they fail in their marriages so that they can come back and stay on the land that was 6 acres.

Further, that the applicants want to share equally in respect to the estate. The  
20 respondent claims that the remaining land was given to his father by virtue of the succession register. So he inherited all of it.

The applicants stated that their father left no will. They did not follow the law. The succession register says that there was no will and according to Sections 140 (1) and 142 of the Registration of Titles Act, and Section 33 of the Judicature Act  
25 this court has power to hear this application.

Counsel concluded that the respondent has no Letters of Administration in respect of his father and grandfather.

In reply counsel for the respondent submitted that the applicant did not come to court with clean hands. That the applicant alleges that 6 acres were caveated  
30 whereas the respondent only caveated 4.1 acres that belongs to his father which he derived from the succession register. That the family of the Late Paul Kironda occupies the 4.1 acres with their residential home together with their siblings.

That the respondent has a caveatable interest and the late Leonard Charles Kirona left a will.

Counsel added that by virtue of the succession Register, the respondent has a caveatable interest and existence of another grant defects the interest of the respondent and the respondent has taken further action for revocation of the same grant which was filed in family division.

Further, that according to the Land Succession Law of the Kingdom of Buganda by 31<sup>st</sup> October 1912 what was equivalent to Letters of Administration was the Succession Certificate of that time. Counsel also cited the case of Israel Kabwa v. Martin Banoba Mugisa, Civil Appeal No. 52 of 1995, where it was stated that with or without Letters of Administration, a beneficiary can file in court. The applicants are abusing court process by filing this application because it is creating multiple suits.

In rejoinder counsel for the applicants noted that in 1963 Administrator General was not there. The matrimonial home was built by the clan Members. Thus, the caveat should be vacated and the application be allowed so that the applicants can administer the estate until a contrary order is issued.

### **Analysis of court:**

I have carefully listened to the submissions of both counsel, looked at the authorities cited, the application, affidavit in support, affidavit in reply, affidavit in rejoinder and the law cited.

It is not in dispute that a beneficiary can sue as long as there is something to protect then he/she can lodge a caveat.

In the instant case the respondent is the grandson of the late Yowana Mabikka with or without letters of Administration the respondent can sue. Caveating the land at this point would cause injustice to the respondent. Since there is a suit in the family division for revocation of the of the Letters of Administration, let it be expeditiously handled to determine whether the applicants are the rightful or legal administrators or the respondent who was given land by virtue of the succession register.

I therefore find no reason to vacate the caveat but to maintain the caveat until family court determines the matter. I therefore, dismiss this application without costs since both applicants and respondent are related. I so order.

Right of appeal explained.

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5 OYUKO ANTHONY OJOK

JUDGE

21/06/2022