

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS CAUSE NO.19 OF 2022

5 **MAWEJJE HANIFA NAKAYIZA** (*Administrator*
of the Estate of the late SULAIMAN
MAWEJJE):.....**APPLICANT**

VERSUS

MAWEJJE HADIJA NANTONGO:.....**RESPONDENT**

10 **Before: Lady Justice Alexandra Nkonge Rugadya.**

Ruling.

This application was brought by notice of motion under **Section 33 of the Judicature Act cap.13, Section 98 of the Civil Procedure Act cap.71, and Section 140 of the Registration of Titles Act cap.230** seeking orders that;

- 15 **1. The respondent does appear to show cause why the caveat she lodged on land comprised in LRV 3883 Folio 25 Kyadondo Block 273 plot No.5218 Land Gangu should not be removed and/or lapsed;**
- 20 **2. The caveat on the above land be removed and the caveator be ordered to pay compensation to the applicant in the sum of Ug. Shs. 30,000,000/= (Uganda Shillings thirty million only);**
- 3. Costs of the application be provided for.**

Grounds of the application:

25 The grounds of this application are contained in the affidavit in support thereof deposed by the applicant, **Ms. Mawejje Hanifa Nakayiza** wherein she stated *inter alia* that she is the administrator of the estate of the late Sulaiman Mawejje, in which capacity she was registered as the proprietor of land comprise in **LRV 3883 Folio 25 Kyadondo Block 273 plot No.5218 Land Gangu** (hereinafter referred to as the 'suit land'), and that the respondent has
30 since lodged a caveat thereon.

That although the applicant has approached the Uganda Muslim Supreme Council regarding the marriage certificate relied on by the respondent, it has been noted that the genuineness and authenticity thereof hangs in the balance until otherwise, and that the applicant has



since requested the respondent to remove her caveat so as to enable her execute her mandate as an administrator but she has declined to do so.

That the respondent's caveat is not only interfering with the applicant's execution of her mandate as administrator because she cannot complete the sake of the suit land and distribute the proceeds therefrom to the lawful beneficiaries, it has also caused the applicant and other lawful beneficiaries of the deceased's estate great inconvenience, anguish, and damage for which the applicant is entitled to be compensated.


In addition, that because the respondent has no beneficial interest in the suit land, there is no lawful justification to retain the caveat thereon and that because the said caveat has hampered the applicant from executing her mandate, the other lawful beneficiaries of the estate are suffering a great loss owing to the said caveat to the extent that the University going student has failed to complete his studies because the money that ought to have been used to clear the tuition has been blocked by the respondent's caveat.

Further, that this court has the power to direct the Registrar of titles to remove/lapse the caveat and that the other lawful beneficiaries are likely to suffer more damage and loss if the same is not removed, therefore, it is in the interest of justice that an order doth issue directing the Registrar of Titles to remove the said caveat from the suit land.

The respondent opposed this application through her affidavit in reply wherein she objected to the application on grounds that the application same had not been endorsed by the Registrar, nor had it been fixed for hearing and that this application is incompetent and that it ought to be dismissed with costs on grounds that the same ought to have been served on her before 21st March, 2022 but she received the court documents from a one Esther, who sent her the documents on phone and asked her to receive the same on 23rd March, 2022.

That while the application ought to have been endorsed by the Registrar and fixed for hearing, the same was not done at the time of service and that the respondent only received a picture of a letter from **M/s Kajeke Maguru & Co. Advocates** informing her that the judge had instructed her to file her response by 1st March, 2022 which is not only unacceptable, but also oppressive as the same was aimed at excluding the respondent from the hearing, thereby violating her constitutional right to be heard, and that court should not be made an accomplice to such schemes.

In relation to this objection, this court however finds that adequate efforts were made to ensure that the respondent was made aware of the application. The respondent needed to go a step further to prove that the delay or omissions alluded to amounted to a denial of her right to a fair hearing.



Merits of the application:

The respondent deponed that she got married to the late Sulaiman Mawejje on 19th January, 2012 in her father's home at Temanakali Bukomero in Kiboga District; and that they were married by a one Sheikh Badru Musa Lugemwa in the presence of several witnesses, and in accordance with their religion, therefore it is false that the Uganda Muslim Supreme Council has since questioned the existence of the said marriage.

That the late Sulaiman Mawejje who died at International Hospital Kampala on 31st July, 2016 was survived by 3 widows to wit, Hadija Nantongo Mawejje the respondent, Mariam Nakinobe, Mawejje and Hanifa Nakayiza Mawejje the applicant herein, and 16 children, and that he left behind several properties including the suit land.

That upon the deceased's demise, the respondent expected that meetings to elect an administrator would be held, but she was later discovered that the applicant had secretly obtained a grant of letters of administration on 16th December 2016, having petitioned court on 28th November 2016.

That the applicant in the said petition lied to court that the deceased only had 7 children and one widow, whereas not, and that all family members had allegedly held a meeting on 25th November, 2016 before the Administrator General; and that it had been agreed that she be appointed as the administrator of the deceased's estate but the said meeting was only attended by the applicant and her children while the other children and widows were not made aware of the same.

That the respondent and Ms. Mariam Nakinobe Mawejje have since applied to have the grant of letters of administration revoked on grounds of fraud and misrepresentation, and that although in her petition for grant of letters of administration the applicant stated that the properties therein belonged to the deceased, she has since amended her written statement of defence claiming that she owns 50% of the properties; and also claimed ownership of several properties that form part of the deceased's property.

In addition, that while the respondent and Hajjati Mariam Nakinobe Mawejje decided to lodge caveats on all the properties belonging to the deceased in order to secure their interests therein and those of their children, the respondent specifically lodged a caveat on the suit land to secure not only her beneficial interest, but also that of her children as well as other beneficiaries, with their consent after she was informed of the applicant's intention to sell off the same therefore it is not true that the said caveat is inconveniencing the same beneficiaries that consented to it.

Further, that during the scheduling of the case at the Family Division, the applicant through her lawyers informed court that she recognized the respondent and Ms. Hajjati Mariam Nakinobe as widows of the deceased.



The respondent was therefore shocked that the applicant has since filed the instant application, casting doubt upon the respondent's marriage to the deceased and denying her as a widow and a beneficiary to the estate and that the instant application is just one of the many examples of how the applicant has constantly abused court process.

- 5 That because the university going child referred to by the applicant in her affidavit in support is not the only school going child since there are other children of the late Sulaiman Mawejje of school going age, the same is merely an excuse fronted by the applicant in order to sale off the property and that the respondent has lawful justification to retain the caveat bearing in mind the fact that the grant of letters of administration held by the applicant ought to be
10 revoked for fraud, material misrepresentations and bearing in mind the dishonest behaviour exhibited by the applicant in this court.

That the purpose of the caveat is to stop the transfer of the property into the names of a third party without the consent of the caveator therefore unless the caveat in issue is standing in the applicant's way of transferring the same to a third party, without consent and before the
15 family court makes judgment, it is perturbing that the applicant would claim that the same is causing her anguish.

It is in the interest of justice that this court therefore puts a stop to the applicant's schemes and tactics lest the case in the Family Division shall be rendered nugatory.

- In addition, that if this court orders the removal of the caveat, and orders the respondent to
20 pay **Ug. Shs. 30,000,000/= (Uganda Shillings thirty million only)**, the same would amount to an abuse of court process thereby setting a precedent that will enable the applicant to remove all the caveats meaning that the interests of all the beneficiaries, including that of the respondent will no longer be protected thus it is neither just, equitable nor is it in the interest of justice that this application is granted.

- 25 That the instant application is not only an abuse of court process, but also a waste of court's time that should be dismissed with costs and that if it succeeds, the rights of the other beneficiaries to the estate will be defeated and the applicant will succeed in excluding the other beneficiaries from benefiting from the estate.

- The respondent also filed a supplementary affidavit in reply deposed by Mr. Husna Mawejje,
30 one of the children of late Suliman Mawejje's and a beneficiary of his estate. He reiterated the position as stated in the respondent's affidavit and stated that he was aware that the respondent had with his consent lodged a caveat on the suit land to secure their interests on the land after they were informed of the applicant's intention to sell off the same and that because many of his siblings are of school going age, the applicant is not justified in claiming
35 that she wants the caveat removed for only one student yet there are several of them.

That the respondent is lawfully justified to retain the caveat on the land bearing in mind that the grant of letters of administration is being challenged on grounds of fraud and misrepresentation.

The applicant did not file an affidavit in rejoinder to the respondent's averments in the affidavit in reply as well as the supplementary affidavit in reply to the application.

Representation.

The applicant was represented by **M/s Kajeke Maguru & Co. Advocates** while the respondent was represented by **M/s Lex Uganda Advocates & Solicitors**. None of the parties filed written submissions in support of their respective cases as directed by this court.

I shall therefore proceed to determine this application without consideration of the same.

Consideration by Court.

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 applicant has through uncontested affidavit evidence demonstrated that she is a widow of the late Sulaiman Mawejje, and a beneficiary of his estate which is under the administration of the applicant.

It is also clear from the pleadings and evidence that the grant of letters of administration obtained by the applicant are being challenged in the High court Family Division vide **Civil Suit No.17 of 2017** on grounds of fraud and misrepresentation. The plaintiffs therein seek a revocation of the said grant obtained by the applicant.

The issues raised in this application have a bearing on the distribution, management and authenticity of the grant obtained by applicant, the existence (or otherwise) of the respondent's marriage to the late Sulaiman Mawejje, and whether or not therefore she is a beneficiary of his estate.

The determination of the authenticity of the grant of letters of administration obtained by the applicant vide **Administration Cause No.2259 of 2016** is also a matter that is still pending determination of the court in 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.

It is the finding by this court that this application is intended to circumvent the decision of that court and pre-empt this court to issue orders prematurely before the preliminary matters in the family division (which the applicant is fully aware of) are fully resolved.



This amounts to an abuse of court process. Accordingly, the issues raised in this application are improperly before this court.

They are to be determined by the family division where all the matters pertaining to the administration and distribution of the estate of the Late Sulaiman Mawejje are to be concluded.

The caveat lodged by the respondent on the land comprised **LRV 3883 Folio 25 Kyadondo Block 273 plot No.5218 Land Gangu** is to be maintained therefore, until further orders are made under **Civil Suit No.17 of 2017** still pending before the High Court Family Division.

This application is therefore dismissed with costs to the respondent.

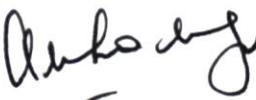
I so order.


.....
Alexandra Nkonge Rugadya

Judge

10th February, 2023.

Defended on 10/2/2023


10/2/2023

