

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MPIGI**  
**MISC. CAUSE NO. 014 OF 2017**

**ANNA MARIA NAKAMYA:::APPLICANT**

**VERSUS**

**NTANDA PASCAL:::RESPONDENT**

**BEFORE: HON. JUSTICE WILSON MASALU MUSENE**

**RULING**

The applicant, **Anna Maria Nakamya** filed this application against the respondent, **Ntanda Pascal**. The application was under Section 140 (1) of the Registration of Titles Act, Section 98 of the **Civil Procedure Act and Order 52 rules 2 and 32** of the Civil Procedure Rules. It was seeking for orders that:-

- i) An order that the Respondent's caveat lodged on the applicant's land comprised in **Mawokota Block 312, Plot 20, situate at Musaale Kitojjo** be removed and or struck out.
- ii) Costs of the application be provided for.

The grounds of the application are briefly that:-

- 1) That Applicant is a widow of the late Henry Bukomeko Ndigaetangala, the registered proprietor of the above described land.
- 2) The Applicant is the appointed administrator of the estate of late Henry Bukomeko Ndigaetangala.
- 3) The Applicant is in the process of distributing the estate of the late Henry Bukomeko Ndigaetangala..

- 4) The Respondent is a biological son of the applicant and late Henry Bukomeko.
- 5) The caveat lodged by the Respondent on the above described land is invalid, null and void.
- 6) That the existence of the caveat on the land has impeded the Applicant's desire to distribute the estate.
- 7) It is just and equitable that the order is issued.

The applicant was represented by M/S Semuyaba, Iga and co. Advocates, while the respondent was not represented and despite being served, did not file a reply. So the applicant was allowed to proceed ex-parte.

The Applicant's submissions were that she is the widow, beneficiary and Administrator to the estate of the late Henry Bukomeko who was the registered proprietor of land comprised in **Mawokota Block 312, Plot 20** but she is being prevented from distributing the said land to its rightful beneficiaries by the existence of the Respondent's caveat on the land.

It was further submitted that on the 16<sup>th</sup> day of November, 2017, the Respondent was effectively served with the application and the affidavit in support thereto, he did not file an affidavit in reply. My Lord it is our submission that the evidence on court record is not contravened and is unchallenged by the respondent, it should thus be admitted by this Honourable Court and it has to be taken as the absolute truth. The case of **Tororo District Administration vs Andalalapo Ltd (1977) IV KALR 126, Kania J** held that where no affidavit in reply is filed, the affidavit in support is taken to be unchallenged and truthful, subject to whether the contents pass the test of evidence and is cogent and of probative value.

**Rose Achieng (1978) HCB, 297 and Eridadi Ahimbisibwe vs World Food Programme & others [1998] IV KALR 32, Lugayizi J**, stated that the facts as adduced in the affidavit evidence which are neither denied nor rebutted are presumed to be admitted.

Counsel for the applicant further stated that under Section 180 of the Succession Act, an administrator of a deceased person is his or her legal representative for all purposes and all property of the deceased person vests in him or her as such. Furthermore, under Section 192

and 193 of the succession Act, letters of administration vest in the administrator all rights and interests belonging to the intestate as effectively as if administration had been Granted at the moment after his or her death as was held in **Khalid Walusimbi vs Jamil Kaaya & Anolio (1993) 1 KALR 20** .

I have carefully considered and internalized this application which is unopposed. Under S. 270 of the Succession Act, an executor or Administrator has power to dispose off property of the deceased either wholly or in part in such a manner as he /she may think fit and Section 25 of the same Act states that all property in an intestate estate devolves upon the personal representative of the deceased upon trust for those persons entitled to the property under the Act.

The Administrator of the estate can effectively distribute the said land to all beneficiaries, who include Respondent if the caveat is lifted. If the Respondent was opposed to the widow getting letters of administration, he would have objected before the grant; and not to go behind by way of lodging a caveat.

In the circumstances, I find and hold that this is a fit and proper application to be allowed so that the caveat is lifted to enable the applicant distribute the caveated land to all the rightful beneficiaries.

I accordingly do hereby allow the application with costs.

**W. Masalu Musene**

**Judge**

**05/12/2017**