

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
MISCELLANEOUS CAUSE NO 82 OF 2020

5 **1. MULINDWA JOSEPH**

2. MULUYA MOSES.....APPLICANTS

VERSUS

10 **1. COMMISSIONER, LAND REGISTRATION**

2. ERIKA NSAMBU

3. CHRISTOPHER SEBWATO.....RESPONDENTS

RULING:

15 **Introduction:**

The applicants are the administrators of the estate of the late Mulindwa Yusufu. They filed this application against the

Commissioner land registration, Erica Nsambu and Christopher Sebwato, seeking orders that the respondents be summoned to show cause why their respective caveats registered on the certificate of title of the land comprised in **Kyaggwe block 153, plot 42 at**
5 **Kanyagoga** (suit land) should not be removed; a consequential order directing the 1st respondent to remove the caveat forthwith; and for costs of this application.

Grounds of the application:

The grounds of this application are as stated in detail in the affidavit
10 in support deposed by Mr. Muluya Moses the 2nd applicant. But briefly, that on various dates in 1943, 1952, 1969 respectively, the respondents registered different caveats on the suit land which caveats had no foundation in fact or in law.

That the various interests as claimed were barred by **section 5 of**
15 **the Limitation Act**; and also contravened **sections 48, 139 (1), 140 (1), 170 (a) of the RTA, Cap. 230.**

That the 1st respondent's continued refusal or neglect to dislodge the said caveats despite several requests made by the applicants was not only improper but also lacked legitimacy.

That the said caveats have greatly affected the estate as the applicants cannot deal with the suit lands as administrators and that in the interest of justice the said caveats be accordingly vacated.

The applicants were represented in this application by **M/S**
5 **Kagarura Advocates & Solicitors**. They however did not file written submissions as directed by this court on 19th August, 2020.

The 2nd and 3rd respondents, Mr. Erica Nsambu and Mr. Christopher Sebwato were served by way of substituted service, as ordered by this court on 17th September, 2020 vide: **MA No. 1231 of 2020**.

10 **Analysis of the evidence:**

In support of their claim the applicants presented **Annexure 'A'**, letters of administration granted to the two applicants for the estate of Mulindwa Yusufu, their late grandfather, on 21st February, 2011, **vide AC No. 855 of 2010**.

15 **Annexure B**, is a certified copy of the certificate of title for the land comprised in the original **plot 42, block 153, land at Kanyogoga**, out of which several subdivisions had been created. The said plot originally covered an area of 192 hectares.

On the encumbrance page, several entries had been made between 1933 and 1981, the last one being under the names Victo Muyinda who had lodged a caveat claiming 20.0 acres that had been transferred to **plot 26 and 27**. Details of these two plots were not
5 however availed to court.

Although the said caveat by Victo Muyindo had been crossed out/cancelled, no other details were presented to show the circumstances under which this had been done.

What is clear is that Victo Muyinda who lodged the caveat was
10 claiming 20 acres from the suit land at that time. The total encumbered area if added to that of other claimants whose caveats had been registered onto the certificate of title prior to that, could not have been less than 66 acres. (Refer: **Annexture B'**)).

Annexture D was also presented by the applicants, letter dated 22nd
15 January 2020 by the Commissioner, Land Registration, (1st respondent) addressed to **M/S Wetaka Advocates & Legal Consultants**.

It was in response to the said firm's letter dated 1st August, 2018 which sought to have the caveat dislodged on the ground that the 1st

respondent's decision to register caveats of persons on the suit land, none of whom was known to the family.

In particular, and as seen from the certificate of title, one John Mary Senkubuge whom the applicants had failed to trace claimed 30 acres
5 out of the suit land. That he was neither known to the family nor in the village where land is located and neither was he party to the suit.

Several requests had been made to the 1st respondent's representatives at Mukono MZO, to have the caveat vacated but they kept referring the applicants to the 1st respondent as the only
10 authority with power to remove caveats.

Their contention was that the caveats had been on the land for over 68 years and no inquiry was ever made by the 1st respondent. Despite several requests made to the 1st respondent, it had declined to exercise its power to vacate the said caveat.

15 The applicants further claimed that no person had ever come to the land to make any claim of interest.



The 1st respondent did not file any response in regard to this application. However in the response to the applicants' letter, had this to say:

The land in question has the following encumbrances which your client must address before any transaction can be registered in respect of the land:

- *A mortgage by Mulji Kanji Mehta of Zirobe Mego (sic!), whose address is P.O Box 216 Kampala who claims an interest in the said land as equitable mortgagee by deposit.*
- *The commissioner of Land Registration who lodged a caveat in order to protect a claim of John Mary Senkubuge in the said land.(emphasis mine).*
- *Erika Nsambu of Kanyogoga Kyaggwe of Lukijo, Mengo who claims 16.0 acres of the said land.*



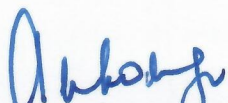
- Christopher Sebwato of c/o Mr. W Luyombo of Po Box 569 Kampala who claims 30 acres in the suit land.

With particular reference to the request for vacating of the commissioner's caveat which was lodged in favour of John Mary Senkubuge, no dealing in the said land shall be registered until his claim has been fully addressed and settled by way of production for registration by way of registration of a record of subdivision and transfer of part of the relevant said land to his estate by the administrators of Yusufu Mulindwa.

Resolution of the issue:

I have carefully perused the pleadings as presented to court. **Section 102 of the Evidence Act** places the burden of proof on such party as would fail if no evidence at all were given by either party.

The law under **section 139 of the Registration of Titles Act, Cap. 230** is that a beneficiary or other person any estate or interest in land under the operation of the Act may lodge a caveat forbidding the registration of any person as transferee or proprietor of the of land, until after a 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 or unless the caveator consents in writing to the registration.

Under **section 140 (2)** thereof, except in the case of a caveat lodged by or on behalf of a beneficiary claiming under a will or settlement or
5 by commissioner, every caveat shall be deemed to have lapsed upon the expiration of sixty days after notice is given to the caveator that the proprietor has applied for the removal of the caveat.

As indicated earlier, the 1st respondent listed down the names of all those who had interest on the suit land and the size of the areas they
10 claimed on the original plot.

From the contents of their correspondence, particular reference was made to the request for vacating of the caveat lodged by the 1st respondent in favour of John Mary Senkubuge.

This court noted however that out of those who had registered their
15 interests on the title, Mr. John Mary Senkubuge had not been made a party to the application and indeed the applicants did not avail to court any evidence to prove that all that was possible had been done to secure his presence and participation.

It is not clear in the present application under what circumstances the caveators had acquired their respective interests in the property: whether as beneficiaries, *bona fide* purchasers or occupants.

That was information that the applicants could have been possibly
5 secured upon request made to the 1st respondent. There is however no evidence that the applicants ever made any such request to obtain the relevant information to back up their claims.

The office of the 1st respondent in its rejection of the applicants request for registration wanted evidence to show that Senkubuge's
10 claims had been fully addressed and settled, by way of production for registration a record of subdivision and transfer of part of the relevant said land to his estate by the administrators of Yusufu Mulindwa, (applicants), which condition had not been met. There is no explanation as to why the applicants did not provide the information
15 as requested for by the 1st respondent.

Secondly, the applicants did not present any inventory to show how their late grand father's estate had been distributed, yet they had obtained letters of administration as early as 2011, and required by law to distribute the estate within six months.

Fourthly, it cannot be established from the record as to when their deceased grandfather died, whether testate or intestate, and why all that time his children never applied for letters of administration. in any case, the copy of the letters of administration availed to court
5 was not certified, creating doubt about authenticity.

As also pointed out earlier, the copy of certificate of title presented to court was certified in 2007. It remained doubtful as to whether or not the status of that land remained the same, thirteen years later.

Thus while it may be correct to state that a caveat is a temporary
10 measure of protection and cannot remain on the land perpetually, the markings on the title clearly indicate that **plot 42, Block 153** is no longer what it was at the material time. It has been subdivided over the years and subsequent plots curved out of it.

All these point out a number of possibilities which this court would
15 not like to rule out, namely that the estate had already been distributed; third party interests-some covered and others left out in this application- had already been created without evidence that they were all settled.

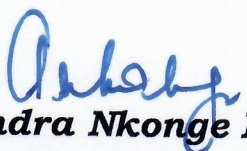
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In short therefore, the application raises triable issues which court may not fully resolve in this application as further and better particulars were not availed.

5 The applicants ought to have at least presented to court all the documents pertaining to this land, including the original certificate of title or recently certified and for transparency, the area schedule reflecting any subdivisions or new plots that may have been curved out (validly or otherwise) over the years.

10 Short of that the prayers made in this application would be prematurely granted.

Since the respondents did not file any replies to the application, no costs awarded.


Alexandra Nkonge Rugadya

15 **Judge**

2nd November, 2020