



The applicant together with **TUSABA SPECIOZA** are the Administrators of the estate of the **late ELUSANIYA BINYWELA KABU** (their father) the registered proprietor. A photocopy of the Letters of Administration *Vide* Admin Cause No. 62 of 2010 Chief Magistrate's Court of Mukono were attached as annexure "C".

Counsel for the applicant submitted that upon obtaining a grant of the above Letters of Administration, the applicant together with **Tusaba Specioza** were duly entered on the Blue page of land comprised in Buvuma Block 69 Plot 2 as Administrators of the estate of the late **ELUSANIYA BINYWEZA KABU**. A photocopy of the search statement from land office Mukono is attached as annexure "A".

That the applicant before distributing the estate did a search and were shocked to discover that the said land had been caveated by the respondent through their lawyers M/s Jogo Tabu & Co. Advocates. Though the applicant pleaded the issue of the caveat, he never attached on this application the said caveat with its supportive affidavit. Thus, this Court cannot really emphasise the grounds of the caveator when she lodged a caveat on the applicant's land. This document in my view was necessary to be looked at by me in determining this application. Failure to attach the said caveat and its supportive affidavit in my view is fatal to this application.

That the Respondent does not have any justification because his late father **Nasanaeri Luganda** had before his demise sold the said land to the **late Elusaniya Binywela Kabu** who after purchase transferred the same into his names. Photocopies of the sale agreement together with translation are attached as annexures "B1-2". That the transfer was done when the late **Nasanaeri Luganda**

was still alive. This piece of submission and evidence adduced by the applicant clearly indicated that there are issues between the applicant and the respondent. Wherefore, the right procedure would have been for the applicant to lodge a suit against the respondent by way of a plaint.

Consequent to the above, I agree with the submission by Counsel for the applicant that the Respondent never filed an affidavit in reply to rebut the Applicant's claims despite having been served by way of substituted service. In such circumstances the law presumes that the respondent conceded to the averments on facts in the affidavit in support of this application. In the case of **Samwiri Massa Vs Achen [1978] HCB 297** Court held

**...that where certain facts are sworn to In an affidavit, the burden to deny them is on the other party and if he does not they are presumed to have been accepted and the deponent need not raise them again but if there are disputed then he has to defend them.**

Further, it is trite law that a party who is served with Court process and does not file a defence takes himself/herself out of the jurisdiction of court. However, the applicant still had a burden to prove his case against the respondent on the balance of probabilities.

Counsel for the applicant submitted that the applicant is the registered proprietor of the land now in dispute as the Administrator of the estate of the **late Erusaniya Binywela**. I am afraid to say that, that assertion is not true. According to the copy of the letters of administration attached to this application, the administration of the estate of late Elusanyiya Bimweyala Kabu was granted to Mitti James (the applicant) and Tusaba Specioza. The administration of the said estate is joint by the aforesaid persons. There is no law allowing the applicant to deal with the estate

of the said deceased alone. The instant application should have been filed in Court by the two joint administrators. In the instant application it was not done. I, therefore, hold that this application is a nullity at law. My proposition is supported by Section 264 of the Succession Act, Cap 162, Laws of Uganda which states that:

**“ After any grant of probate or letters of administration, no person other than the person to whom the same has been granted shall have power to use or prosecute any suit, or otherwise act as representative of the deceased, until the probate or letters of administration has or have been recalled or revoked.”**

Finally, for the reasons given hereinabove in this ruling, this application has no merit. It is accordingly dismissed with no orders as to costs.

Dated at Kampala this 29<sup>th</sup> day of April, 2013.

sgd  
**MURANGIRA JOSEPH**  
**JUDGE**