

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
HCT-03-CV-MC-0011-2023

MUGOTE SAMUEL :::APPLICANT

VERSUS

- 1. ROBERT MUGOTE**
- 2. WILBER MUGOTE:::RESPONDENTS**

Misc. Cause - Application to Remove a Caveat.

Held: Application NOT Granted.

BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE

RULING

This Ruling follows an Application by Notice of Motion by **Mugote Samuel (hereinafter referred to as the Applicant)** the Administrator of the Estate of the Late Zadoki Mugote by a Grant of Court brought under **section 140(1), 142 and 188 of the Registration of the Titles Act, Cap 230 (RTA) and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules SI 71-1 (as amended) (CPR)** seeking for Orders that:-

1. The Respondents show cause why the caveats they lodged on the land comprised in Leasehold Register Volume 1456 Folio 1 Land at Nakyaka Bugabula Plot 6 respectively should not lapse.
2. The Respondents caveats be removed from the said land.
3. That the Respondents pay compensation /damages to the Applicant for lodging the aforesaid caveat without lawful orders or reasonable cause.
4. The Commissioner Land Registration removes the Respondents caveats on land comprised in Leasehold Register Volume 1456 Folio 1 Land at Nakyaka Bugabula Plot 6.
5. The Respondents pay costs of this Application.

The grounds upon which this Application are that:-

- a) The Respondents lodged a caveat on the land herein above described when they had no reasonable cause whether lawful or otherwise to do so.
- b) The Applicant has suffered damage and costs as a result of the subsistence of the caveats on his land.
- c) It is in the interest of justice and equity that the Application is allowed.

It is supported by the Affidavit of **Mr. Mugote Samuel** in which he expounded upon the above stated grounds that:-

1. He is the registered proprietor of the land comprised in Leasehold Register Volume 1456 Folio 1 Land at Nakya Bugabula also known as Plot 6 as per certificate of Title annexed and marked **"A"**.
2. His late father Zadoki Mugote by a gift deed bequeathed the said land to him, however before proper transfer was effected, his father died to which he transferred the said land from himself as Administrator of the Estate to his own personal capacity in 2009 as per copies of the Will and gift deed hereto attached.
3. Sometime in March when he attempted to convert the said land to freehold from leasehold, he discovered that two of his brothers had in 2010 without lawful cause filed a caveat on the same.
4. At the time of the filing the said caveat, the said land did not form part of the estate of the deceased Zadoki Mugote since he had in his lifetime already dealt with it.
5. He immediately approached the Respondents who became adamant and started demanding that on top of their respective shares which they had already received from their late father Will, they should also have a portion of the said land.
6. Before then, he was not aware of any caveat subsisting on his land comprised in Leasehold Register Volume 1456 Folio 1 Land at Nakya Bugabula also known as Plot 6 as per copy of affidavit attached and marked as Annexure **"D"**.
7. He had been advised by his lawyers of M/S. Ouma & Co. Advocates which information he verily believes to said land having been dealt with before his death, does not form part of the estate of the deceased, Zadoki Mugote, and if the Respondents claimed any right thereon, should have filed a suit for determination by the court.
8. On account of the lodging and having the said caveats subsist on his land, he failed to cause any lawful transaction thereon, which has stifled his business and caused him to suffer loss, inconveniences and damage for which the Applicants should be held liable.
9. It is in the interest of justice that the said caveat be removed since its subsistence has no lawful basis or reasonable cause.

The Affidavit in Reply was deposed by the 1st Respondent **Robert Mugote (the 1st Respondent)**, the gist of which is that:-

1. The Applicant fraudulently and is not deserving as the 1st and 2nd Respondents are beneficiaries just like the Applicant herein as all are brothers and sons to the Late Zadoki Mugote.
2. The Applicant herein is the only heir from among all of them as children to the Late Zadoki Mugote who died testate leaving a Will which spelt out the land at Nakyaka Bugabula comprised in Leasehold Register Volume 1456 Folio 1 Plot No.6, Kamuli as per the Will annexed as **REX. 'A'**.
3. The said property to which he and the 2nd Respondent lodged a caveat on, was transferred into the names of the heir /Applicant as Administrator of the estate of the late Zadoki Mugote.
1. The 1st and the 2nd Respondent lawfully lodged a caveat on the land to have their interests as well as well as indeed the interests of their other siblings together with the ailing surviving widows (their mothers) to the late Zadoki Mugote.
2. As a beneficiary, he knows for sure that his brother is only expected to hold the property in trust for the rest of the beneficiaries, and this he is not a sole owner.
3. The 1st Respondent has been advised by his Advocates of M/S. Kasumba, Kugonza & Co. Advocates, which advice and information he verily believes to be true, right and correct that in the circumstances his Application and prayers therein for removal and lifting of their caveat would be to defeat their interests as beneficiaries and justice.
4. The Commissioner /Registrar of Lands should hold tight the caveat as lodged for the beneficiaries.
5. In addition, that the Applicant filed **Civil Suit No.21 of 2023** in the same Honorable Court claiming that the suit land in question belongs to him a sole owner.
6. The 1st Respondent has been carrying out farming activities on the *Kibanja* which was caveated for many decades hitherto on twenty acres.
7. The Applicant surreptitiously and dishonestly transferred Title into his own name as was revealed during the family mediation committee way which in 2011 and the committee went ahead to called him into settling and withdrawing **Civil Suit No.10 of 2010** filed in Magistrate court of Kamuli suing the Respondents on the suit land.
8. The Applicant is not entitled to the prayers sought and the Application should be dismissed with costs.

In Rejoinder, the Applicant filed an Affidavit and averred that with the help of his lawyers of Ouma & Co. Advocates which information he verily believes to be true that:-

1. The Respondents' Affidavit in Reply was made in sheer bad faith, filled with deliberate falsehoods and was made to mislead court.
2. The caveat is not meant to permanently encumber a title, but the party who wishes to challenge the right of the registered proprietor should file a suit to determine his rights over the suit property.
3. The Respondents are time barred from opposing the removal of the caveat since they never acted on their purported interest after lodgment of their caveat for over 13 years.
4. In specific rejoinder to paragraph 5 and 6, he averred that those amounts to a contradiction by the Respondents who while are seeking to rely on the Will, in the same year that they lodged the caveat, convened a meeting with the Chief Administration officer of Kamuli and informed him that the late Zadoki Mugote did not have a Will as per copy of the Minutes /Report dated 19th March, 2010 attached marked **'E'**.
5. In specific reply to paragraph 7 & 8 of the Respondents Affidavit in reply, that he was advised by his then lawyer, Tuyiringire Onesmus that the only practical way that property registered in the names of a deceased person could be dealt with, was by registration on the Title as an Administrator of the estate of his late father, that he only put his wishes into effect as per the gift deed as per **Annexure 'F'**.
6. That the same reputable lawyer and a former Speaker of the Parliament of Uganda Alex B.N Waibale who prepared both the Will and the Gift deed, having in his lifetime been accused by the Respondents of conspiring with him to forge documents, before his death, prepared a report detailing the circumstances under which the said impugned documents were prepared by him for my late father Zadoki Mugote as per **Annexure 'G'**.
7. In specific reply to paragraph 13 of the Respondent's Affidavit in Reply, he was informed by his afore mentioned lawyers which information he believes to be true that **Civil Suit No.21 of 2023** has no bearing on the current **Misc. Cause since Civil Suit No.21 of 2023** is for trespass to land while the current Application is for notice to show cause why the caveat lodged on his land should not be removed.
8. Their late father, was a wealthy man with over 20 houses, various parcels of land and property which the Respondents together with all the beneficiaries of the estate of the late Zadoki Mugote each received their share of their late father's estate as per the Will but were never satisfied and regularly forcefully took over many undistributed

- properties as per copy of the complaint and correspondence from the LCIII chairperson attached as **Annexures 'H' and 'I'**.
9. In specific response to paragraph 14 of the Respondent's Affidavit in Reply, the Respondents only recently and forcefully trespassed on large tracts of the suit land to sugarcane growers in spite of the Applicant requesting that they desist since a big project was in the works.
 10. In specific reply to paragraph 15 and **Annexure 'C'** of the Respondents' Affidavit in Reply, the said document's contents were merely a recommendation of the said committee which were never binding on any party and that the Applicant cannot be subjected to suffering and loss for an action sanctioned and approved by our late father.
 11. He reiterated the averments made in his affidavit in support of the Notice to show cause why the caveat should not be removed that since the suit property was at the time of lodgment of the said caveat already dealt with and did not form part of the estate of the late Zadoki Mugote.
 12. He has been advised by his lawyers of Ouma & Co. Advocates that the Respondents' have not adduced any substantial grounds for maintenance of the caveat on the suit land or any iota of evidence proving that the deed of gift relied upon by myself to the effect was a forgery or that there was fraud on the Applicant's part and that therefore the caveat should lapse.

REPRESENTATION

When this Application was put before me for hearing, the Applicant was represented by Counsel Timothy Mugote of M/S. Ouma & Co. Advocates, while the Respondents were represented by Counsel Kugonza Enock of M/S. Kasumba, Kugonza & Co. Advocates.

Both sides were directed to file Written Submissions and they all complied; and I have relied upon them in this Ruling.

BACKGROUND

The background according to learned counsel for the Applicant is that the Applicant who is the registered proprietor of the land has utilized and enjoyed the suit property by farming thereon, renting out some parts and allowing some members of his family to cultivate on the same.

That however sometime in 2023 when the Applicant attempted to deal with the land by converting the same to freehold, he was informed that the same was caveated by the Respondents who claimed to be beneficiaries of the late Zadoki

Mugote and his caveat was registered on 10th August 2009 by Instrument No. 416512. They contended that the Respondents have no reasonable cause for having the said caveat and the same ought to be struck out with costs to the Applicant.

On the other hand, according to the Respondents, that the Applicant herein Mr. Samuel Mugote is heir and also Administrator to the estate of the late Zadoki Mugote who passed on in the year 2002 (testate) leaving a Will attached to the 1st as well as the 2nd Respondents Affidavits in Reply and marked as **Annexure “A”**.

That pursuant to his position as heir, the Applicant in 2005 applied for and was granted Letters of Administration dated 10th of February 2005 attached to the 1st as well as the 2nd Respondents Affidavits in Reply and marked as **Annexure “B”**.

Further, that pursuant to the said Letters of Administration that were acquired under **Administration Cause No. 57 of 2004** in his name, the Applicant got registered on the Certificate of Title to one of the most important estate property to wit Nakyyaka Bugabula, Kamuli District as Samuel Mugote-Administrator of the Estate of the late Zadoki Mugote. That this important property left behind by the late measures around 500 acres/199.674hectares attached to the Applicant’s Notice of Motion as **Annexure “A”**. That the date of registration was on 21st of September 2005, the same year he acquired the Letters of Administration.

That right now, the same Certificate of Title was registered on the 10th of August 2009 into the Applicant’s individual/personal names as per the Applicant’s Affidavit in support of the Notice of Motion as **Annexure “A”**.

That shortly after the Applicant secured registration individual/personal names, he ran to the Chief Magistrates Court of Kamuli and filed against the same Respondents alongside other siblings a suit on 5th March 2010 while waving the newly acquired Certificate of Title into his personal names with the main prayer that Court declares him the rightful owner of the suit land.

That that very year 2010, the Respondents herein lodged a special caveat as beneficiaries on their own behalf as well as other siblings as possessors and users of parts of this land a copy of which is attached as to the Applicant’s Affidavit in support of the Notice of Motion as **Annexure “D”**. That the Respondents therein filed a counter claim and pleaded fraud. That in the year 2010, the Applicant (Plaintiff in Civil/ Land Case) instead preferred and duly organized together with the Respondents herein an acceptable as well as

impartial Mediation Committee that was tasked inter alia to mediate the Court matter as per the Report attached to the 1st as well as the 2nd Respondents Affidavits in Reply and marked as **Annexure “C”** which inter alia underpinned the significance of the Will of the late Zadoki Mugote accordingly observing that the ‘Deed Gift’ was a later introduction as the same was not found to be in line with the Will.

Further, that the Applicant was apparently reported to have expressed willingness to abandon the offending ‘Deed Gift’, which is also agreeable to the Applicant save that their arguments are that these recommendations may not be legally binding; and that is what is contentious and had filed **Civil Suit No. 21/2023** recently in Jinja High Court with a prayer that he be declared the lawful owner of the land and that the Respondents be declared trespassers and that the instant caveat be removed; and that the two Respondents have also filed a suit against the instant Applicant by way of a counter claim in **Civil Suit No. 21/2023** awaiting trial.

I have carefully analyzed the above facts and looking at the current Application, I agree that they in great detail throw light on the background of this Application.

THE LAW

The law governing beneficiary caveats as established under **Section 139 of the Registration of Titles Act, Cap 230 (RTA)** provides that:-

“Any beneficiary or other person claiming any estate or interest in land under the operation of this Act ... may lodge a caveat with the commissioner ...forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after 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 as is required in the caveat, or unless the caveator consents in writing to the registration.”

Section 140 (1) of the Registration of the Titles Act, provides that:-

“Notice of Caveat to be given; lapse of caveat etc.

Upon the receipt of such caveat, the Registrar shall notify the receipt to the person against whose Application to be registered as proprietor or, as the case may be, to the proprietor against whose title to deal with the estate or interest has been lodged; and that the applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor may, may if he or she thinks fit, summon the caveator to attend before the court to show cause why the caveat should not be removed ;and the court may, upon proof that the caveator has been

summoned, make such order in the premises either ex parte or otherwise, and as to the costs as it deems fit.

Section 142 of the Registration of the Titles Act, provides that:-

“Compensation for lodging caveat without reasonable cause”

Any person lodging any caveat with the registrar , either against bringing land under this Act or otherwise , without reasonable cause, shall be liable to make to any person who may have sustained damage by the lodging of the caveat such compensation as the High Court deems just and orders.

Section 188 of the Registration of the Titles Act, provides that:-

“Ordinary rules of procedure and rights of appeal to apply”

Subject to section 189 and to any rules which may be made by the Chief Justice under any of the powers conferred on him or her, the same rules of procedure and practice shall apply in proceedings before any court under this Act as are in force for the time being in respect of ordinary proceedings before that court; and there shall be the same rights of appeal in respect of proceedings under this Act as exist for the time being in respect of ordinary proceedings.

And

Order 52 rule 1 and 3 of the Civil Procedure Rules provide for the procedure that an Application of this nature must take.

RESOLUTION OF THE APPLICATION

PRELIMINARY POINTS OF LAW

In Reply, learned counsel for the Respondents in their Written Submissions raised Preliminary Points of law to the effect that that pursuant to **paragraph 3** of the **1st Respondent’s Affidavit** in reply as well as **paragraph 3** of the **2nd Respondent’s Affidavit**, the same are to the effect *inter alia* that the Applicant’s Application is barred **by law** as well as being a **waste of this Honourable Court’s time**; accordingly, they had put him/the Applicant on sufficient notice.

That as may have already seen or noted from the above undeniable facts, the Applicant has filed and is filling a number of suits (the rightful definition of a Civil Suit is given under **section 2** of the **Civil Procedure Act Cap. 71-(herein CPA as amended)** which include **Misc. Causes** such as the instant one).

That such actions of multiple suits from the same Applicant on more or less the same subject matter as against more or less the same **Respondents or defendants** would be and are **barred by law**. The ultimate remedy that the Applicant is seeking is the same; he is targeting at kicking respondents and all other would be **beneficiaries** out of the suit land and thus he be **declared lawful and or rightful owner** thereof.

That **Section 5** of the **CPA** is to the effect that “*whereas courts of law are empowered with jurisdiction to entertain all civil matters, but there are those such as the instant one that could be either expressly or impliedly **barred***”.

Additionally, that the un-concealable and indeed un-denied facts as shown do **reveal triable facts**-even when the affidavits are put side by side; and with due respect the naked eye can really visualize **dishonesty, fraud** and such like predispositions; all of which would exacerbate the need for a **fully-fledged trial** and for purposes of evidence. **That this can only be rightly possible in a full trial suit lest injustice is occasioned** and this Honourable Court cannot and should not be stampeded and or duped into a quick Misc. cause in the light of all the aforementioned issues that necessitate full trial.

That this would of itself thus be **abuse of court process**; and, **section 98** of the **CPA** would empower this Hon. Court to prevent such injustice and to prevent likely **abuse of court process** – and should be safe and thus pleased to strike out this cause. That now that there are already suits flowing from the Applicant himself why the hurry here respectfully; and besides, why would such a matter with **glaring triable issues be concluded as tersely as this way?**

That certainly that they would maintain the prayer for having this Cause in its current struck off; and respectfully so, with **attendant costs** to the Respondents. In the seemingly *locus classicus* authority of **C/A No. 61/2010 Rutungu Properties Limited vs Linda Harriet Carrington & Harriet Kabagenyi**, (much as this being on the caveat removal itself) their Lordships (**at page 4**) approved the known principle that it is legally right to call for full trial where there are allegations such as fraud and such like **triable issues**.

I have carefully analyzed the submission of learned counsel for the Respondents, but I have found it more coherent to deal with the concerns raised in the Preliminary Objections together with the substantive issues so as to avoid repeating myself.

SUBSTANTIVE ISSUES

It was submitted by learned counsel for the Applicant that the main issues to be resolved by this Court are:-

1. Whether the Applicant is the Registered Proprietor of the suit land?
2. Whether the Respondents have any sufficient grounds to maintain the caveat on the suit land?
3. Whether the Respondents have brought an ordinary action against the Applicant?
4. Remedies.

1. Whether the Applicant is the registered proprietor of the Suit Land?

In respect of the 1st issue, it was submitted by learned counsel for the Applicant that this was an uncontested fact averred and admitted by both the Applicant and the Respondents in their respective Affidavits. That the Applicant in Paragraph 2 of his affidavit in Support of the Application clearly states that he is the registered proprietor and indeed attached his Certificate of Title; and the Respondents never contested this fact and only confirmed the same in paragraph 8 of their Affidavit in Support.

They relied on **Section 59 of the Registration of Titles Act** which is to the effect that, “possession of a certificate of Title by a registered person is conclusive evidence of ownership of the land described therein”.

Further, that under **Section 176 (c) (supra)** a registered proprietor of land is protected against an action for ejection except on ground of fraud. They cited the case of ***Rutungo Properties Limited vs Linda Harriet Carrington & Anor CACA No. 61 of 2010***, Justice of the Court of Appeal Helen Obura held.

“In the instant case, the caveatee is the registered proprietor and therefore all he has to prove is that he holds the registered title to the suit land as prima facie evidence of his unfettered right to deal with the land as he may please”

They concluded that the Applicant sought that Court resolves this issue in the affirmative.

2. Whether the Respondents have any sufficient grounds to maintain the caveat on the Suit Land?

In respect of this issue, it was submitted for the Applicant that the Respondents have gone to great lengths to prove that the Suit Land forms part of the Estate

of the Late Zadoki Mugote as such they qualify as beneficiaries thereunder. That it is not in contention that the suit property, at the time of lodging the Caveat had been dealt with and had been transferred to the Applicant. Although the said Respondents claim that there was fraud on the part of the Applicant which alleged fraud they were aware of at the time of filing the said Caveat, they did not bother to act on this knowledge, and neither have they attempted to provide sufficient proof that the said contested transfer was borne out of fraud. That in the *Locus Classicus* case of **Boynes v Gather (1968) EA** it was held as such. “The primary objective of a caveat is to give the caveator temporary protection. It is not the intention of the law that the Caveator should relax and sit back for eternity without taking steps to handle the controversy, so as to determine the thought of the Parties affected by its existence”.

They argued that in the current case, while the Respondents were aware of the alleged forgery of documents by the Applicant by the time of the Caveat, the Respondents never bothered to lodge a suit to determine their rights of ownership if any and it took the whole of 13 years when the Applicant himself noticed the existence of the Caveat that he filed the current Application. They relied on the case of **Rutungo Properties Limited v Linda Harriet Carrington & Anor (Supra)**, where Justice of the Court of Appeal Helen Obura relied on various authorities in handling a matter similar to the current matter, she held: “... The Respondents as Caveator must prove the existence of the following”.

1. The caveator has sufficient grounds to maintain the caveat
2. The caveator has brought an ordinary action timeously against the caveat
3. The balance of convenience lies in maintaining the caveat rather than its removal”.

They argued that in the above case just like the current case, *“...the respondents stated that they were aware that the land in question had been transferred to the Appellant and their concern was that the transfer was illegal and fraudulent ...the Respondents stated that they were aware that the land in question had been transferred to the Appellant and their only concern was that the transfer was illegal and fraudulent”*

Again, that in that case, the Justices of the Court of Appeal regardless of this fact, deemed it necessary that the Respondents show sufficient grounds to maintain the caveat.

They therefore submitted that the Respondents have not by their pleadings shown that they have any sufficient grounds for maintain the Caveat.

3. Whether the Respondent have brought an Ordinary action timeously against the Applicant?

Learned counsel for the Applicant submitted that it is on record that the Respondents since lodging the caveat in 2010 have not instituted any action to determine the interests of both parties. That from 2010 to-date there is no single suit originated by the Respondents who were under a duty to file an action in which their interest against the Applicant would be determined and the alleged fraud or illegality would also be investigated. That not only is the period of 13 years extreme inordinate delay, it is statutorily barred by section 5 of the **Limitation Act** which provides:

“No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her, if it first accrued to some person through whom he or she claims, to that person”.

That in the mentioned case of **Rutungu Properties Limited (Supra)** Justice Hellen Obura stated that:-

“I am not persuaded by the argument of the Respondent’s Counsel that there was no unreasonable delay or that the delay cannot be visited on the Respondent... the Respondents have not offered any satisfactory explanation for their failure to institute any Court action to prove their interest...”

Further, that in **Teo Ai Choo v Leong Sze Hian (1982)2 MLJ 12** Sinnathuray J Directed the removal of a caveat because of delay of eleven months during which period no action had been filed. In that case, delay was the sole reason for the removal of the caveat.

They argued that in the current Application, the Respondents have not offered any explanation as to why there was a delay of 13 years since lodgment of the Caveat and indeed as per paragraph 12 of the 1st Respondent’s Affidavit in Reply implies,

“That therefore the Commissioner/Registrar of Lands should hold tight the caveat as lodged by me and also for the other beneficiaries”

They submitted that this it is a clear indication that the Respondents have no intention of instituting a hearing to determine their own and the Applicant’s rights, but intend and are relying on this Honourable Court to keep the Caveat lodged for as long as possible in utter abuse of the principles behind lodgment of a Caveat.

On whether the balance of Convenience lies in maintenance of the caveat or its removal, they submitted that the Applicant in paragraph 4 of his Affidavit on support stated that when he attempted to initiate procedure to covert the suit land to Freehold from Leasehold, he learnt that there was a subsisting caveat. That this frustrated any effort to secure and/or convert the same to protect the said land from any encroachment and lapse of the lease. The Applicant also stated that the lodgment of the said caveat has hindered the Applicant from conducting any lawful transaction, stifled his business and has caused him to suffer loss, inconvenience and damage.

That the Respondents have not adduced any evidence to prove that removal of the Caveat would in any way inconvenience them. The Respondents both averred as per paragraph 14 of their respective Affidavits in Reply that they have been utilizing some parts (20 acres) of the suit land as “**kibanja holders**” which claim is not only misconceived but legally unsustainable.

That **Kibanja Holders** are unique to Mailo Land which is only located in Buganda where the Kibanja holder pays Busulu to the landlord and enjoys certain rights over the land. The land in question is however Leasehold Land, located in Kamuli (Busoga) and the Respondents have not adduced any evidence of payment of Busulu to the Registered proprietor, therefore the claim that they are **Kibanja holders** is not only unsubstantiated but is sadly misconceived; therefore, it goes without saying that the balance of convenience is in favour of removal of the Caveat as opposed to the Respondents who after lodging the Caveat simply decided to sit on their backside in the hope that their rights are forever protected.

In Reply, it was submitted for the Respondents that it is glaringly obvious and should not waste this Hn. Court’s time as well as theirs indeed. **(This is a superficial issue like with due respect asking a mother; whether she is a woman-when she is already one)**. Rather that the **real contention/issue** here of ought to be; **who gave powers to the Applicant who hitherto had his name on the Certificate of Title appearing as SAMUEL MUGOTE ADMINISTRATOR OF LATE ZADOKI MUGOTE into his personal/individual name SAMUEL MUGOTE proprietor.**

That it is an **agreed** fact as deposed by the **1st** as well as the **2nd Respondents** together with the attendant annexures that after the demise of their **father late ZADOKI MUGOTE in 2002**, the Will was read out by its maker a one **WAIBALE Esq.**, an Advocate who also doubled as in-law to the **MUGOTE Family** asserting and declaring/confirming **NAKYAKA Land of approx.. 500 acres as estate property**. That the Applicant’s Affidavit in Support as well as their Affidavit in Rejoinder do attest to the fact of the maker and eventual reader of the **Will** being

a husband to the biological sister of this instant Application; and in the Will, the instant Applicant was confirmed as **heir**.

Further, that the Applicant hereafter as already shown from as well the various annexures, in **2005** again following the instructions and guidance of the **Will**, was assisted to apply for and was granted **Letters of Administering the Estate**. That particular year **2005**, pursuant to grant of the **Letters**, got registered on the land situate at **Nakyaka Bugabula** in **Kamuli District** otherwise one of the significant estate properties measuring **approx. 500 acres** into his name rightfully as Administrator thereof-thus **Samuel Mugote of P. O Box 1431, JINJA-Administrator of the Estate of the Late Zadoki Mugote, High Court of Uganda at Jinja, Admin. Cause No. 57 of 2004** as per **annexure "A"** to the **Applicant's Affidavit** in support of the application. That up to that point in time this property that forms the subject matter of the Applicant as well as respondents' being in Court is/was still **estate property** and indeed as the affidavits of both parties.

In addition, that it is only the year **2009**, that **Title** to this property in a manner that can only have been **clandestine and or surreptitious** changed into the Applicant's **personal/individual name**-thus **Samuel Mugote**. That together with this development, a completely strange and new document surfaced styled, **DEED OF GIFT** and the same was even **pre-dated** and or **dated backwards for 1997** – meaning 'logically' dated before demise of the **purported 'donor' Zadoki Mugote!** That the maker of this otherwise '**authoritative document**' (Deed of Gift as revealed in annex '**C**' of **Applicant's Affidavit in Support** as well as another with due respect manufactured and hanging report annexed to the Applicant's Affidavit in Rejoinder) also it is not surprising happens to be the same brother in-law **Waibale Esq.**

They therefore submitted that such design of procuring of Title in the Applicant's name was not executed in an organized manner as the same left glaring gaps on the part of the designer.

Further, that besides and additionally immediately just few months after the Title had been procured from estate property in to the Applicant's **personal/individual name in 2010**, now armed with the same **Title** rushed to Court (**Chief Magistrate's Court of Jinja at Kamuli**) seeking **inter alia** to be declared Lawful owner as well as **a prayer to kick out** and or evict other beneficiaries (the instant Respondents) in utilization of parts of the land.

They concluded that once this Hon. Court puts this pieces of evidence side by side and analyses them, certainly the rush and pressure from the Applicant can

only be seen as suspect; and that perhaps a full hearing would reveal differently and better such that for now his Applicant be denied.

As to Whether the Respondents have any sufficient grounds to maintain the caveat on the suit land, they submitted that it is significant for them to indicate to this Hon. Court that the kind and or type of caveat that was lodged in respect of this property is of a **sui generis** nature in the sense that the same is not the Ordinary Caveat. This is a caveat of **beneficiaries** as was spelt out in the Affidavit that supported its Application the raw copy of which was volunteered to this Hon. Court by the Applicant **annexure 'C'** to their Affidavit in Support of Application.

They therefore submitted that the Respondents' caveat given the circumstances cannot and could not be removed easily using the Registrar-**beneficiaries'** caveat; and that whereas it could have been possible for the Applicant and his helpers to procure the **subject matter** Certificate of Title, with due respect, similar tactics like the ones we have already exposed of employing pre-dated **'Deed of Gift'** could not easily be employed in causing its removal by Registrar. That the kind and or type of caveat that was discussed in the authority of **Rutungu Properties Limited (Supra)** that one envisaged under **section 20 (1) of the Registration of Titles** i.e. bringing property/land under the operation of the **RTA**.

That **Section 140 (2) of the RTA** in a way also espouses that same **special and unique** nature; and certainly there would be a clear distinction given the instant caveat of a beneficiary of estate. That the arguments that Counsel attempts to apply in order to persuade this Hon. Court their side are not exactly applicable to a caveat lodged by a beneficiary, more so the instant one where the Respondents are in possession and utilization of the subject matter property.

Further, that whereas, it is true that in principle a caveator should not thereafter relax and sit back following its lodging as espoused in some of the authorities discussed by their Lordships in **Rutungu (Supra), a beneficiaries' caveat** is not just a 'cup of tea'. That in any case, even our principle law the **RTA** itself does not give time limit to this type of caveat notwithstanding the construction that the same should not delay – it was always dependent on the circumstances of each case and actually; **section 144 of the RTA** is of the effect that when it comes to caveat of the beneficiary, do not be in a hurry to have the same removed, in other words, the circumstances of the cases do accordingly differ as they are not on all fours.

In addition, that the same **section 144 of the RTA** is very much cognizant of the weight a beneficiaries' caveat is endowed and or possessed with; and to this end they respectfully maintain that given the instant circumstances that surround us, there are also **triable questions** that would merit this Court sitting for purposes of **full trial hearing**.

They questioned how they fared and or measured within the three (3) parameters that as Respondents/caveator given by decided authorities to wit;

1. The caveator has sufficient grounds to maintain the caveat.
2. The caveator has brought on ordinary action timeously against the caveatee.
3. The balance of convenience lies in maintain the caveat rather than its removal.

That they had already given their submissions in regard to **parameter number 1** herein above in the foregoing; and regarding **the parameter 2; whether the respondents in the instant matter have brought an ordinary action and or suit timeously against the caveatee**, they stressed the fact that even now at this particular juncture, the Respondents it cannot be disputed filed a suit by way of counterclaim duly paid for and filed in this Hon. Court. That while in the year **2009** when the land at (**NAKYAKA, BUGABULA, Kamuli District**) which is subject matter that we lodged caveat on had its **Title** procured in the personal name of the Applicant herein-**Samuel Mugote**, the same having been changed from that of the Administrator of the Estate, as Respondents **immediately a few months after in 2010**, when they lodged the caveat, they also straight away filed **a suit by way of Counter Claim as per** paragraph 15 of the Affidavits in reply of the 1st as well as the 2nd Respondents – that was in 2019 **Civil Suit Number 10/2010**.

Apparently, that the Applicant herein who had hitherto just acquired Title in his personal name specifically on the **8th of September, 2009** had rushed to **Chief Magistrate's Court of JINJA** at Kamuli on the **5th of March, 2010** – as date of filling and served on to these same Respondents. The Respondents dully executed both; i.e. caveating, together with responding to the suit of the Applicant who was **inter alia** seeking to be declared legal and rightful owner thereof. That the humble Respondents had effectively and timeously filed a **Civil Suit by way of Counter Claim inter alia** particularizing **fraud**. That suit stayed at the **Chief Magisterial Court** for some time only to be interrupted by the request and need to have the matter settled and or mediated at the time; hence the import of **annex 'C'** to the Respondents' affidavits in reply **to wit** a Report.

Furthermore, that when the above Court matter originally filed by the instant Applicant as Plaintiff seemed to have lost position and or status, he (the Applicant) has yet again filed **Civil Suit No. 21/2023** before this very Hon. Court. The very instant Respondents/now Defendants, have equally **filed a suit also by way of Counter Claim duly paid for**; in other words, either way the Respondents as caveators have timeously filed a suit given the circumstances as traversed. That the suit of the humble Respondents that they are now talking about is *inter alia* for **cancellation** of the offending Certificate of Title right now in the personal/individual name of the Applicant the same having been **transferred surreptitiously in a manner akin to fraud.**

They questioned what then should have happened following the suit also filed immediately of the year **2010** now that Court was not taking off? Should the humble Respondents be blamed for the period of time?; and added that certainly not at all.

That besides, this is a caveat that does not lapse easily like the other ordinary caveats. This respectfully is that of beneficiary with more fortified protection under the law as shown earlier herein – i.e. actually the essence hereof is that it should not **just lapse before the controversy is determined.**

In addition, that Counsel's swipe at the Respondents' otherwise inadvertent reference to themselves as '**bibanja holders**' a term akin to Mailo Land Buganda when this is a lease in Busoga Region. The uncontested point is that the humble Respondents are in possession and utilization of parts of this land (with clear boundaries) and they have lived there as deposed in there Affidavits for a long time now both before and after the demise of their late joint father **Zadoki Mugote**-the reason for which in the Applicants' **Civil Suit** he is seeking *inter alia* their eviction. That even if this land (the subject matter in this case) was to be rightfully and or lawfully for the Applicant which of course is not (with uttermost respect), given their long stay and usage of the land that he now seeks to evict them from, the humble Respondents at most would be equitable owners of their respective pieces of land-duly protected under the law.

That Counsel also submits that the Respondents deposed no single evidence to pin down the Applicant as one holding the suit land in trust for them, but their responses clearly and easily discernable from their two respective Affidavits in Reply are to effect that actually the Applicant like the Will decreed was made heir, as the same Will was read out so, a few years after as heir he is granted Letters of Administering the Estate Property of which were listed in the Will including the subject matter of this case, then immediately getting registered on

Title rightfully and lawfully as **Samuel Mugote – Administrator of the estate of Late Zadoki Mugote** etc.

That all these do indicate him as one in the position as a **Trustee** for and on behalf of the Respondents and their beneficiaries all as listed in that same **Will** that bestowed on to him the respectability of **heir**.

In Rejoinder, it was submitted for the Applicant that they had had occasion to peruse the Respondents' submissions in reply and rejoined by reiterating their submissions and added that, apart from making legally unsubstantial claims that Respondents have not shown any good cause why the caveat lodged on the suit property should not lapse/or be removed by Order of Court. That it is indeed interesting to observe the Respondents' Counsel submit that "***Our concern as Respondents in this matter does go beyond the Transfer of Estate Property...***" and yet even with the knowledge of the said transfer of the property into the Applicant's Personal names, the Respondents took no legal step to have the matter deliberated on by any Courts of Law and indeed, it has always been the Applicant who had filed causes for the same. That if indeed the Respondents were "**Concerned**" as submitted by their Counsel, they ought to have filed a suit for determination and settlement of the same.

That the Respondent's' Counsel in his submissions just like his clients, the Respondents who deponed in their Affidavits sadly and mistakenly submits that the Applicant filed **Civil Suit No. 21 of 2023** against the Respondents and other beneficiaries for/over the same cause of Action. That this is a misleading fact, as already submitted, the said Civil Suit has no bearing on the current Application as the said Civil Suit is premised on trespass and was filed against not only the Respondents, but other individuals and neighbors who have continuously encroached/trespassed on the suit property; and although other family members have always abided by the instructions of the Applicant, the Respondents have always been the ones stubbornly refusing to abide.

They argued that it goes without saying that the Applicant in the suit being a registered proprietor, only needs to show that the land occupied by the Defendants therein are occupying property forming part of his Titled Land. It is noteworthy that the cause of action in that case is for a declaration that the Defendants therein are trespassers.

Furthermore, that Counsel argued that a beneficiary caveat does not and cannot lapse even if this was indeed a beneficiary caveat as envisaged under **Section**

140 (2) of the Registration of Titles Act, (which it is not) this Honourable Court has the power to order for its removal.

They however submitted that the said caveat does not qualify as a beneficiary caveat and indeed ought to have lapsed after the Statutory Period of 60 days. That **Section 139 of the RTA** provides for beneficiary caveats thus:

“Any beneficiary or other person claiming any estate or interest in land under the operation of this Act or in any lease or mortgage under any unregistered instrument or by devolution in law or otherwise may lodge a caveat with the registrar in the form in the Fifteenth Schedule to this Act or as near to that as circumstances permit, **forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after notice of the intended registration or dealing is given to the caveator, or unless the instruments expressed to be subject to the claim of the caveator as is required in the caveat, or unless the caveat consents in writing to the registration”.**

They submitted that it should be noted that at the time of Lodgment of the said Caveat, the said transfer had already happened and the Property did not at this point form part of the Deceased’s’ estate. That the remedy which the Respondents’ were left with at the time after transfer was for filing a Suit against the Applicant as well as the Registrar of Titles for cancellation of the said transfer to the Applicant and illegal transfer of the said land to the Applicant by the Registrar of Titles. Even when they were aware of such a transfer, but they merely sat back after filing the Caveat and never took any steps to have the said issue of alleged fraud entertained by any court.

Again, that the Respondents in a further attempt to mislead the Court, refer to a counter-claim they allegedly “immediately filed”, however, apart from the obvious fact that a counter-claim is by nature not initiated/originated by the counter-claimants, they do not explain to Court how the said Counter-Claim was resolved considering that the Applicant continued to utilize and be registered on the Suit Land.

That they further attempt to rely on a Mediation Committee Report conducted unofficially outside the auspice and supervision of Court which they believe was proof that the matter had been handled and resolved even if the Applicant continued to stay registered as proprietor on the Suit Land; and this points to an acquiesce by the Respondents to the continued personal ownership of the

Suit Land by the Applicant for a period of over 12 years and are thus barred from being entertained in this Court.

That the authority both Counsel have referred to (***Rutungo properties LTD***) dealt with removal of a caveat where the Applicants in that matter sought leave of Court why the Caveat lodged on their land should not lapse/be removed. That the Trial Judge in that matter made the same mistake which the Respondents are proposing to this very Court to make i.e. that this Court should have the matter sent for a full trial since it raises triable issues which ought to be resolved by a proper/full trial. It ought to be noted that the Respondents have since filing this matter not seen it fit to file a suit timeously to have the matter tried as they suggest and now demand that the same is now subject to a trial which it should be noted would be time barred.

They therefore submitted that they cannot benefit from their own inordinate delay and they should not and indeed cannot hide or cover up the illegality of their presence in Court today by stating that they filed a Civil Suit in form of a Counter-Claim and they are time barred.

Without prejudice, they submitted that even if the Limitation period started to run after filing of the purported Counter-Claim and not after their discovery of the transfer, the period would still be in excess of 12 years since filing the said counter-claim and once again the Respondents would be time barred today. That the Respondents also intimated in their submissions that the Applicants' instant Application is time barred; this is a misplaced argument seeing as the Applicant in Paragraph 10 of this Affidavit in Rejoinder deponed that the Respondents only recently and forcefully trespassed and indeed the Applicant has filed **Civil Suit No. 21 of 2023** for trespass committed by the various individuals as well as the Respondents which Suit is pending hearing in the High Court of Jinja which cause of Action, it is well-established principle of land Law, is a continuous tort. They pointed Court to **Section 59 of the Registration of Titles Act** which reads that:-

*“No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of **any informality or irregularity in the application or in the proceedings previous to the registration** of the certificate and every certificate of title issued under this Act shall be received in all courts as evidence of the particulars set forth in the certificate and if the entry of the certificate in the Register Book, **and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or***

interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power".

That the above is the very central provision under which Registered Proprietors on Titles are protected and for one's registration thereon to be impeached and/or restricted, there has got to be an import of fraud. That this Application as Counsel for the Respondents has rightly stated is only concerned with the Removal of a Caveat for which the Respondents have failed to furnish any grounds for the continued existence of the same on the Applicant's Title.

They therefore prayed that Court makes an order for removal of the same and the Respondents are then free to explore all other legal and sensible remedies to justify their claims on the suit land.

In resolving the 1st issue, it is undisputed that that the Applicant herein Mr. Samuel Mugote is heir and also Administrator to the estate of the late Zadoki Mugote who died testate in the year 2002 leaving attached to the 1st as well as the 2nd Respondents Affidavits in Reply and marked as **Annexure "A"**.

It is also not in dispute that he was appointed as heir to the late father of the parties to this Application and pursuant to his position as heir, the Applicant in 2005 applied for and was granted Letters of Administration vide **Administration Cause No. 57 of 2004** in his name dated 10th of February 2005 attached to the 1st as well as the 2nd Respondents Affidavits in Reply and marked as **Annexure "B"**.

Both the 1st Respondent averred in their respective Affidavits that they each with the other siblings that they are beneficiaries of the estate of the late **Zadoki Mugote**. This was not controverted by the Applicant who confirmed in his Affidavit in Rejoinder in paragraph 9 *"That our said late father, was a wealthy man with over 20 houses various parcels of land and property which the Respondents together with all the beneficiaries of the Estate of the late Zadoki Mugote"*.

Following up on that, the Applicant got registered on the Certificate of Title to the suit property to wit Nakyaka Bugabula, Kamuli District as Samuel Mugote-Administrator of the Estate of the late Zadoki Mugote measuring around 500 acres/199.674 hectares attached to the Applicant's Notice of Motion as **Annexure "A"** on 21st of September 2005, the same year he acquired the Letters of Administration.

Thirdly, it is undisputed that right now, the same Certificate of Title was registered on the 10th of August 2009 into the Applicant's individual/personal names as per the Applicant's Affidavit in support of the Notice of Motion as **Annexure "A"**.

Shortly after the Applicant secured registration in his individual/personal names relying on a Gift Deed which the Respondents do not agree with, the Applicant herein went ahead and filed a case in the Chief Magistrates Court of Jinja at Kamuli against the same Respondents alongside other siblings a suit on 5th March 2010 and in reiteration, the Respondents herein lodged a special caveat as beneficiaries on their own behalf as well as other siblings as possessors and users of parts of this land a copy of which is attached as to the Applicant's Affidavit in support of the Notice of Motion as **Annexure "D"**.

It is this Caveat which is the subject of this Application.

It is also noted that in reply to the above stated suit, the Respondents also filed a WSD and a Counter Claim and pleaded fraud. The Respondents aver that the above stated suit was resolved by an impartial Mediation Committee that was tasked inter alia to mediate the Court matter as per the Report attached to the 1st as well as the 2nd Respondents Affidavits in Reply and marked as **Annexure "C"**.

The above averments are not specifically denied by the Applicant herein save to state that it was not a binding on him. This indicates that the Respondents still have an unresolved equitable interest in the property belonging to the estate of their late father, the late Zadoki Mugote as beneficiaries. This in itself would qualify them to lodge a caveat on the suit land comprised in Leasehold Register Volume 1456 Folio 1 Land at Nakyaka Bugabula also known as Plot 6 as per Certificate of Title annexed and marked **"A"** to the Applicant's Affidavit in support of this Application.

Secondly, the facts by both sides reveal that the Applicant currently claims the suit property as his personal property having acquired the same as gift *inter vivos* from their late father, an averment contested by the Respondents. It was a result of the above that the Respondents lodged the caveat which is the subject of the current Application on their behalf and on behalf of their other siblings all as beneficiaries of the estate of their late father Zadoki Mugote.

It is therefore not disputed that while the Respondents as beneficiaries in the estate of the late Mugote have demonstrated that they possess protectable interests on the suit land, there is a contention as to whether the suit land currently registered in the names of the Applicant as per the Certificate of Title

comprised in Leasehold Register Volume 1456 Folio 1 Land at Nakyyaka Bugabula also known as Plot 6 as per certificate of Tittle annexed and marked “A”.

As to whether their equitable interest in the suit property is extinguished by Limitation as argued by learned counsel for the Applicant, I strongly believe that those are not arguments for this Application, but can only be rightfully addressed by allowing both sides to adduce their evidence in a full trial, but not in an Application of this nature.

I’m also live to the law governing caveats as cited in the case of ***Boynes vs Gathure (1969) EA 385 as cited in Hunter Investments Ltd. vs Lwanyaga & Anor Misc. Cause No. 0034 of 2014*** and I agree with the holding therein. See also ***Leocadia Tibamanya & Kahoza Edwin vs Akanyamuhanga John Tibs HCT-6-CV-MC-0020-2018*** by this very court.

Further, according to **Section 140 (1) of the Registration of Titles Act Cap 230**, it is very clear as to who can apply to remove a caveat lodged on a title. It gives powers to the proprietor or any person claiming under any transfer or other signed instrument by the proprietor. As regards the law that relates to removal of caveat, it is provided that if a caveat is not withdrawn by the party who lodged it, the registered proprietor is supposed to apply to Court. Be that as it is, given the unclear and contentious circumstances under which the title was changed to the Applicant’s names from that of Administrator, it reinforces my earlier finding that there are still unresolved issues regarding the estate of **the late Zadoki Mugote** that require a full trial.

It is not denied that in this particular case, the Applicant is currently the registered proprietor; in the case of ***Sentongo Produce vs Coffee Farmers Ltd & Rose Nakafuma Muiisa HCMC 690/99 cited in Hunter Investments Ltd vs Simon Lwanyaga & Anor HCMC No. 034 of 2012***, it was held that “*for a caveat to be valid, the caveator or must have a protectable interest legal or equitable to be protected by the caveat otherwise the caveat would be invalid*”.

Relating the above to this Application, I agree with learned counsel for the Respondents’ arguments as indicated in this Ruling and also find that with the averments of the 1st Respondents touching on the background of this Application, it is not possible to divorce the current Application from the estate of **the late Zadoki Mugote**, father to both parties herein to which the Applicant

is sole Administrator and the rights of the beneficiaries to that estate among whom are the Respondents.

Secondly, while learned counsel for the Applicant put up spirited arguments that the Respondent's claim is time barred under the Limitation Act because it is now 13 years since the suit that he himself had filed in the Chief Magistrates Court of Jinja at Kamuli in 2010, I believe that is an argument that is misplaced in this Application and it is not possible for this Honourable Court in an Application of this nature to delve into the merits of a case that involves the administration of the estate of **the late Zadoki Mugote** at this point without giving both sides an opportunity to present its side fully.

I therefore agree with the submissions of learned counsel for the Respondents and also find that since a Caveat was lodged to protect the caveators interest as beneficiaries of their late father's estate, which estate it will be presumptuous of this Court to conclude that it has already been dissolved and an inventory filed in Court without any concrete proof being led by both sides, then it is not possible to arrive at a finding that the Respondents are time barred at this point.

In addition, since it is not denied that the Respondents are also beneficiaries of **the estate of the late Zadoki Mugote**, then it cannot be denied that there are still burning questions that have to be resolved key of which are the circumstances under which the Applicant after registering himself on the Certificate of Title as Administrator on the Certificate of Title to the suit land, again transferred the same into his sole names in the manner he did on a Gift Deed which the other beneficiaries to the same estate out of which the suit land belongs are contesting. Much as the Applicant averred that it was a 'Gift Deed' that his father had gifted to him in his lifetime, but the process was not completed before his death, to me, this is one very good reason why there are triable issues that beg concrete evidence to be put before Court in a full trial before they can fully be resolved.

At this point, the only conclusion I can draw is that the Respondents in this Application have an equitable interest in the suit property which can only be protected by maintaining a Caveat over the Certificate of Title to the suit land until such a time when the dispute among the parties is finally resolved.

This issue is therefore resolved in favor of the Respondents.

Issue 2: What Remedies are available to the parties?

Learned Counsel for the Applicant prayed that Court be pleased to disallow the Applicant's Application with costs to the Respondents. That a beneficiary caveat

unlike other forms of caveats does not lapse and can only be withdrawn by the caveator, or removed on an Order of Court.

In the instant case, the Applicant seeks to challenge the caveat lodged by the Respondents and for that reason, the Respondent have to show cause why the caveat should not be removed, failure of which would result into an order for vacation of the caveat by this Court.

It was the 2nd Respondent's averment that the caveat is intended to protect theirs and other siblings and the ailing surviving widows interest in the estate which they received from the distribution of the estate.

They further averred that the Applicant fraudulently transferred the suit land from being Administrator of the Estate of the suit land and then the Applicant transferred the land of the estate to himself. The 2nd Respondents is aware that the Applicant as the heir of their late father was only expected to hold the suit property in trust for the rest of the beneficiaries.

The Applicant averred that the caveat was erroneously lodged as he was advised by his then lawyer, Tuyiringire Onesmus that the only practical way that property registered in the names of a deceased person could be dealt with, was by Registration on Title as an Administrator and being the Administrator of the Estate of his late father, that he merely put his wishes in a gift deed as per paragraph 6 of the Affidavit in Rejoinder.

They prayed that basing on their submissions, he prayed for order that the Registrar land Registration remove/vacate the said caveat from the suit land, that the Respondents pay damage for the lodgment and continued subsistence if the caveat for over 13 years , and costs of the Application to the Applicant.

In reply, it was submitted by learned counsel for the Respondents that their concern as Respondents in this matter does go beyond the transfer of estate property (which is subject matter) that was done illegally and fraudulently –theirs touches their otherwise equitable interest as they are in use as well as possession. That this is clearly known by the Applicant; and this also goes to add to the distinguishing character away from what was obtaining in the case of **Rutungu (Supra)** and the Respondents had more or less no interest (that like the Applicants in that **Rutungu case** where one vendor had apparently sold the same property to two different parties, meanwhile the Respondents much as their caveat was still subsisting, apparently had no sufficient ground any more to maintain the caveat-because the Respondents in that case had already sought for a refund, they had **exhibited lack of interest** in pursuing their **equitable**

interest in the land and their Lordships concluded that perhaps that was the explanation for their failure to file an Ordinary Suit).

Further, that as already shown herein earlier, the circumstances of the humble Respondents' positions would favour **maintenance** of the caveat. The Respondents (indeed together with other beneficiaries) it is not in doubt have been for a long time before and after the demise of their father (**Zadoki Mugote**) for livelihood purposes in utilization as well as possession on the subject land, yet, the Applicant who is expected to hold the entire same in trust would more or less now evict and or throw out the humble Respondents and it would rather be safer that the controversies are sorted in the Civil Suit once and for all.

They concluded that and prayed that this Hon. Court be pleased to disallow the Applicant's Application with costs to the Respondents.

In rejoinder, learned counsel for the Applicant based on the above submissions and prayed for Orders that the Registrar Land Registration remove/vacate the said Caveat from the Suit Land, the Respondents pay damages for the lodgment and continued subsistence of the Caveat for over 13 years on the Applicants' Title and costs of this Application be granted to the Applicant.

In resolving this issue, I have carefully examined the copies of the Certificate of Titles on which the caveats complained of were lodged (attached to the Application). The Applicant is admitting that to change the property into his personal names and avers in his Affidavit in Support of this Application that he was advised by a lawyer. This is contrary to his other averments that it was in accordance to his father's wishes and the registration of the Deed of Gift that purportedly was gifted to him by his father. It is not in dispute that the same Applicant has other than the case that was handled in the Chief Magistrates Court at Kamuli filed **Civil Suit No. 21/2023** (awaiting trial). The averments of both sides, confirm that the two Respondents in reply to the above stated land suit have already filed their WSD and Counter Claim to challenge the Applicant's proprietorship of the suit land.

Whereas the Applicant in his Affidavit in Rejoinder averred and his Counsel in his submissions argued that **Civil Suit No.21 of 2023** against the Respondents and the other beneficiaries over the same cause of action is misleading as it's premised on Trespass to land, filed against the Respondents and other individuals neighboring to the land who are encroaching on the suit property, however, on perusal of in **Civil Suit No.21 of 2023**; I do not agree with his arguments since it is an agreed fact that the suit land which is at the center of the current Application and **Civil Suit No.21 of 2023** once belonged to the late

Zadoki Mugote father of both parties to this Application and also appeared as part of his estate in the Administration Cause that allowed the Applicant powers to administer that estate.

I therefore cannot divorce the above from the provisions of **Section 180 of the Succession Act (as amended)** which is to the effect that an Administrator of a deceased person is his or her representative for all purposes and all the property of the deceased person vests in him or her as such; and once Letters of Administration for the estate of a deceased person have been granted, it is person to whom the Letters of Administration are granted who is supposed to carry out any transactions in respect to the estate, but not the individual beneficiaries.

The above has to be done in the interest of all the beneficiaries to the estate and not to benefit the administrator as an individual and relating the above section of the law to the current Application, and a perusal of the Will attached paragraph 2 of the Affidavit in Reply on the 1st and 2nd Respondents as **REX. 'A'** which alludes to the land at **Nakyaka Bugabula comprised in Leasehold Register Volume 1456 Folio 1 Plot No.6, Kamuli**, I have found that it confirms that was willed as follows;-

“NAKYAKA LAND

This land is on lease except a small area which I bought after leasing. This should never be sold. The heir should use it to generate money for education of my children and assistance to my wives. But girls and boys can go and do cultivation on this land individually or jointly provided they get authority from the heir.”

From the above it buttresses my earlier findings in the first two issues (supra) that there are unresolved issues related to the estate of the late Zadoki Mugote in relation to the suit land and there is a high probability that the Respondents and other beneficiaries (not party to this Application) have an unresolved equitable interest in their late father's estate. This makes their averments in defence of this Application to hold a lot of water and they cannot be ignored despite reasons advanced in this Application by the Applicant for the change of the Certificate of Title into his own names as proprietor after it was first registered as Administrator of the Estate.

It is also apparent from the fact that the Respondents lodged a caveat on the suit land that they are contesting the Applicant's holding the suit land in his personal/individual capacity; and until a competent court decides whether their perceived equitable right to the suit property is legally valid and or not, it has to be protected.

Learned counsel for the Applicant dwelt a lot on his assertion that the current Application has no bearing on **Civil Suit No.21 of 2023** which he filed against the Respondents and others as trespassers neighboring the suit land, however, on the contrary, as I have already found earlier in this Ruling, his arguments go a long way to convince me that it has everything to do with this Application and the interest of the Respondents cannot be divorced from the Applicant's claim.

It is also my finding that a lot of his arguments related to this Application are best placed in a proper suit and until such a time as the circumstances under which the change of title was arrived at is resolved, the precepts of justice demand that one cannot divorce the Applicant's alleged personal ownership of the suit land from the background that led to his acquiring the same.

Without seeming to delved into the merits of **Civil Suit No.21 of 2023** which clearly shows that by filing a Defence with a Counter Claim the Respondents/ Defendants in that suit also have a valid subsisting suit which yet to be heard interparty by substantive evidence from both sides, it is my decision that until such a time as both sides are heard and the issues in the said suit and Counter Claim are fully handled and addressed their logical conclusion so that all the issues surrounding **the estate of the late Zadoki Mugote** are determined finally and put to rest, the Respondents have shown sufficient cause as to why their caveat should maintained.

I therefore hold that the Respondents as beneficiaries to the estate of the late Zadoki Mugote validly put the current caveat and since it has never been vacated to date, the precepts of justice demand that it shall not be vacated by an Application of this nature until the disputes revolving around the property belonging to the estate of the late Zadoki Mugote, the Administrator/heir (Applicant) in this case and the Respondents amongst others parties is fully resolved.

This issue is also resolved in favour of the Respondents; and as such, the whole Application FAILS.

Lastly, the Applicant prayed that this court orders the Respondents to pay general damages or compensation to him for the inconvenience and frustration suffered.

The settled position is that the award of general damages is in the discretion of court, and is always as the law will presume to be the natural and probable consequence of the defendant's act or omission. See: **James Fredrick Nsubuga v. Attorney General, H.C.C.S No. 13 of 1993; Erukan Kuwe v. Isaac Patrick Matovu & A'nor H.C.C.S. No. 177 of 2003 per Tuhaise J.**

Also, in the assessment of the quantum of damages, courts are mainly guided by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered. See: ***Uganda Commercial Bank v. Kigozi [2002] 1 EA. 305.***

A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been if she or he had not suffered the wrong. See: ***Charles Acire v. Myaana Engola, H.C.C.S No. 143 of 1993; Kibimba Rice Ltd. v. Umar Salim, S.C.C.A. No.17 of 1992.***

The party claiming general damages is expected to lead evidence to give an indication of what damages should be awarded on inquiry as the quantum. See: ***Robert Cuossens v. Attorney General, S.C.C.A No. 8 of 1999; Ongom v. Attorney General. [1979] HCB 267.***

In the instant case, the Applicant has not satisfactorily demonstrated that he suffered great inconvenience at the instance of the Respondents who it is clear are also desirous of protecting what they believe are their equitable interest in their late father's estate.

I therefore agree with learned counsel for the Respondents and find that the Applicant is not entitled to general damages and or compensation at this point.

Finally, it is now well established law that costs generally follow the event. See ***Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989 (SC) and Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35.*** Indeed, in the case of ***Sutherland vs. Canada (Attorney General) 2008 BCCA 27*** it was held that courts should not depart from this rule except in special circumstances, as a successful litigant has a 'reasonable expectation' of obtaining an order for costs.

In the instant case, it is clear that all parties to this Application are closely related as family members and they are all lay their claims as beneficiaries of an estate of their deceased ancestor **the late Zadoki Mugote**. Be that as it is, I see no compelling reasons to deny the Respondents costs in this matter bearing in mind that they have successfully defended this Application. They are therefore awarded the costs in this Application.

For the reasons I have given in this Ruling, it is the final decision of this court that the Applicant has failed to satisfy Court that he is entitled to the reliefs sought.

A declaration is hereby made that the Caveats lodged by the Respondents on the suit land comprised in Leasehold Register Volume 1456 Folio 1 Land at Nakyaka

Bugabula Plot 6 currently registered in the names of the Applicant SHALL remain in place until such a time as when **Civil Suit No.21 of 2023** by the Applicant/Administrator of the Estate of the late Zadoki Mugote and the Counter Claim Defence by the Respondents/beneficiaries or any other suit validly filed is resolved.

The Costs of this Application are awarded to the Respondents.

I SO ORDER

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
14/12/2023

This Ruling shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right to appeal against this Ruling to the Court of Appeal of Uganda.

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
14/12/2023