

**Muleme Nassanair & Another v Namirembe
Fatumah and Others (HCT-17-CV-
MC-0003-2024)
[2025] UGHC 294 (12 May 2025)
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- 1. NAMIREMBE FATUMAH
- 2. NALWEYISO JALIA DAMBA
- 3. KIBAZO MUSA ASUMAN
- 4. ASUMAN ALI SSEMAKULARESPONDENTS

BEFORE HON. JUSTICE GODFREY HIMBAZA**RULING.****Introduction**

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- 1. This application was brought by the applicants under Section 222 of the Succession Act Cap 162, Section 33 of the Judicature Act, O.1 r 13 and O.52 rr 1 & 2 of the CPR. The application sought for orders that;
- i) The 1st-3rd Respondents be appointed administrators pendente lite to the estate of the late Asuman Goobi Byakuno for purposes of representing the said estate in Courts of Law.

ii) Costs of the application be provided for.

- 2. The application was supported by the affidavit of the 2nd applicant Lubowa Semei. The application was against the 1st-3rd respondents as 'intended administrators' of the estate of late Asuman Goobi Byakuno, and the 4th respondent as the heir of the deceased, and the one who lodged a caveat against the 1st -3rd respondent's petition for Letters of Administration. For clarity, all the respondents are biological children of the late Asuman Goobi Byakuno.

The application was opposed by the 4th respondent, who filed his affidavit in reply on 24th April 2024.

The parties agreed to file written submissions which have been considered by this honorable court.

Background to this application.

- 3. On 16th January 2013, the applicants, who are grandsons and administrators of the late Lubowa Semeyi filed a suit against Asumani Goobi seeking for declarations and orders that the land comprised in Bulemezi Block 515 plot 15 and 16 at Galikoowa belongs to the estate of the late Lubowa Semeyi which is being administered by the Applicants and that Asuman Goobi registered himself on the land fraudulently. They also sought for cancellation of the names of the said Asuman Goobi from the title. The defendant in the suit(Asuman Goobi Byakuno) filed a Written Statement of Defence on 18th Feb. 2013. According to the proceedings, the suit was called for hearing and was dismissed for want of prosecution under 9 r 17 CPR.
- 4. The defendant in that suit (Asuman Goobi Byakuno) died on 2nd November 2013 leaving behind a will and naming Ssemakula Kibazo Samuel and Katende Lubanga Abubaker as executors of the Will. However, on 25th October 2017, the said executors for some reason renounced their appointment as executors. It is at this point that the 1st -3rd respondents

applied to the Administrator General and were granted a Certificate of No objection on 4th May 2018. Following this, the 1st – 3rd respondents filed a petition for Letters of Administration in the High Court Family Division on 3rd December 2018. However, on 7th February 2019, the 4th respondent who is the heir of the late Asuman Goobi Byakuno lodged a caveat seeking to forbid the grant of Letters of Administration to the 1st-3rd respondents. To date, no action has been taken on the said petition for Letters of Administration. This prompted the applicants, (who are administrators of another estate i.e estate of late Lubowa Semeyi who had sued the respondents' late father) to file this application seeking to appoint the 1st-3rd respondents as

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administrators pendente lite on behalf of the late Asuman Goobi Byakuno. They were prompted to file this application because they could not reinstate the suit against Asuman Goobi Byakuno since he died during the pendency of the said suit.

5. The application was opposed by only the 4th respondent who had lodged a caveat against the 1st – 3rd respondents. The 1st-3rd respondents never filed affidavits in reply. In fact it is on record that they sought to consent to the application, until the 4th respondent came on board.

Issues for determination

The issues for determination are as follows;

- a) Whether the application is properly before court and should be granted
- b) What remedies are available to the parties.

Legal Representation

6. The applicants were represented by M/S Balikuddembe & Co. Advocates whereas the 4th respondent was self-represented. The parties filed their respective written submissions which the court has considered in this ruling.

Resolution of the issues

- a) Issue 1: Whether the application is properly before court and should be granted

Submissions of the Applicants on issue 1.

7. Counsel for the applicants submitted that the applicants are administrators of the estate of the late Lubowa Semeyi and the respondents are children of the late Asuman Goobi Byakuno. That the 1st to 3rd respondents were granted a Certificate of No objection to apply for letters of Administration to the estate of the late Asuman Goobi Byakuno and they had gone ahead to apply for the same until the 4th respondent caveated the process on grounds that he was the customary heir

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of the late Asuman Goobi Byakuno and that the petition for Letters of Administration had been filed without his notice.

- 8. Counsel submitted, while citing the grounds as laid down in the affidavit in support sworn by the 2nd applicant, that the late Lubowa Semeyi left property among others land comprised in Bulemezi Block 515 Plot 15 and 16 land at Galikwoleka and that unknown to the applicants, this land had been fraudulently registered in the name of Asuman Goobi Byakuno in 1986. That they sued the late Asuman Goobi Byakuno before he died, but unfortunately passed on when the suit had not yet been determined. Counsel argued that the 1st-3rd respondents had gone ahead to apply for letters of administration in the High Court only that the application was caveated by the 4th respondent and the customary heir of the late Asuman Goobi Byakuno. Counsel submitted that when the 1st-3rd respondents were served with this application, they communicated through their lawyers M/S Kwesiga, Wangutusi, Ssebunya & Co. Advocates that they would not oppose the application and a consent was drafted with them accepting to be appointed as administrators pendente lite to the estate of the late Asuman Goobi Byakuno to represent the estate in Courts of Law, which position was communicated to court on 16th April 2024 by their lawyer Ms. Florence Namukasa who appeared on brief for Ms. Assumpta K. Ssebunya.
- 9. Counsel further submitted that the 4th respondent had not been served with the application but on 16th April 2024 when the application had been scheduled for hearing, the 4th respondent appeared in court and sought to be served with the application. That the 4th respondent then opposed the application stating that the 1st to 3rd respondents are not fit and proper persons to be appointed as administrators for purposes of representing the estate in courts of law.
- 10. Counsel cited section 222 of the Succession Act that provides that

"When it is necessary that the representatives of a person deceased is made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, Letters of Administration may be granted to the nominee of a party in the suit, limited only for

the purposes of representing the deceased in that suit or in any other cause or suit which may be commenced in the same or in any other court between the parties or any other parties touching the matters at issue in that suit or cause and until the final decree shall be made in it and carried into complete execution"

- 11. Counsel interpreted this section to mean that when in an estate , a person entitled to administration is unable or unwilling to act, court can appoint a nominee or a party in a suit or any such other suit that may be commenced against the deceased as administrator for a limited purpose.
- 12. Counsel argued that the 1st 3rd respondents had applied for letters of Administration to the estate of the late Asuman Goobi Byakuno. However, before they were granted, the 4th respondent caveated the process. According to counsel, the respondents had been granted a Certificate of No Objection , which meant that they were still the ones with authority to apply for letters of administration. Counsel however conceded that the 3rd respondent was once convicted for intermeddling into the estate and therefore was not eligible for grant. Counsel seemed to have dropped the 3rd respondent from the list for grant of the letters of administration, i guess due to his criminal record. Counsel cited section 190 of the Succession Act and submitted that unless the 1st and 2nd respondents are proved to be minors or of unsound mind, they should then be considered for appointment as administrators pendente lite.
- 13. Counsel further argued that under section 98 of the CPA this court is enjoined to grant such orders as for the ends of justice to be achieved, but that the discretion under this section should be applied judiciously and according to settled principles bearing in mind that the decision must be based on common sense and justice. He cited the case of Standard Chartered Bank (U) Ltd V Ben Kavuya & Barclays Bank (U) Ltd (2006) HCB Vol.1p.134. Counsel concluded his submissions by arguing that for the ends of justice to be met, it is imperative that the court grants the prayers sought in order to enable the two estates to determine who the rightful owner of Bulemezi Block 515 plot 15 and 16 land at

Galikwoleka is and to protect the property from being wasted and intermeddled with .

14. He further stated that the administrators of Lubowa SEMEYI have since the death of Asuman GOOBI Byakuno , failed to sue the estate from which they claim the land.

Submissions of the 4th Respondent

- 15. The 4th respondent in his submissions cited Section 222 of the Succession Act and the case of Okwany John Kimbo vs Oddi Nuru & Anor. HCCS No. 31 of 2013 where it was held, that a grant of letters of administration pendente lite is made where, owing to special circumstances of the case the urgency of the matters as appears from the affidavit is so great that it would be impossible for the court to make a full grant in sufficient time to meet the

necessities of the estate of the deceased person. He argued that in this particular case, the application and the affidavits do not show any particular urgency to prompt court to grant the application. He further argued that there is no sufficient cause shown by the applicants as to why they have not filed any suit or cause in the past six years after the dismissal of Civil Suit no. 006 of 2013 on the 22nd January 2018.

- 16. In specific response to the prayer that the 1st-3rd respondents be appointed administrators pendente lite of his father's estate, the 4th respondent submitted that the 1st -3rd respondents are unfit and improper persons who cannot be trusted with anything to do with the estate of their late father due to the various fraudulent acts committed by them towards the estate of the late Asuman Goobi Byakuno and it is on that basis that he prayed in his affidavit in reply that this court accords the family of late Asuman Goobi Byakuno time to obtain Letters of Administration or accords the applicants the right to move the Administrator General to obtain letters of Administration as permitted by law.
- 17. The 4th respondent further submitted that it is on record that the 3rd respondent is a convict having been found guilty of intermeddling into the estate in question. He further argued that the 1st respondent sold Shop no. H40 at Kalitunsi Market Mengo without the knowledge of the beneficiaries, whereas the

2nd and 3rd respondents together sold vehicle registration no. UEE 054 that belonged to the estate and that they intentionally excluded the said sold properties from the petition for Letters of Administration yet they had been mentioned in the deceased's Will. He further argued that the family of the late Asuman Goobi, never at one time nominated the 1st – 3rd respondents to apply for Letters of Administration and that this was the main reason why he decided to lodge the caveat.

- 18. The 4th respondent averred that instead of the respondents being appointed, he would rather the Administrator General be the one to apply for letters of Administration under Sec. 4(3) (d) of the Administrator General's Act Cap 57. He relied on the case of Ssalongo Muwanga George vs Nassr Abdul Gamar Ssebagala HCMA No. 0578 of 2021 for his proposition.
- 19. In conclusion to his submissions, the 4th respondent submitted that the deceased father Asuman Goobi produced 10 children of whom 8 were still alive but the applicants chose those with the history of mismanagement and intermeddling with the estate of the deceased and who even refused to inform the other beneficiaries about their intention to apply for letters of Administration

Resolution of Issue no. 1 by Court

The Law:

- 20. The Law governing applications for grant of Letters of Administration pendente lite is in Section 222 of the Succession Act together with the other enabling laws i.e Section 37 Judicature Act and Section 98 Civil Procedure Act as well as the procedural laws under O. 52 rr1&2 CPR.
- 21. For the proper determination of this application, i shall interpret section 222 of the Succession Act Cap together with section 255 of the Succession Act as Amended. Statutory provisions just like Constitutional provisions are read and interpreted as a whole. This principle ensures that the entire document is interpreted as an integrated whole with each provision supporting and not contradicting each other. The court aims to understand the overall purpose and

effect of the Law taking into account all relevant provisions. In other words the court examines the provisions within the context of the Act and its overall purpose. No single provision should be considered in isolation but rather in relation to all other provisions that address the same or relate to the same subject. The Court of Appeal considered this position in Farid Meghani Vs. Uganda Revenue Authority Civil Appeal no, 0006 of 2021 (Arising from Tax Appeal no. 0185 of 2021) as follows.

"One of the cardinal rules of Statutory Interpretation is that statutes are to be read as a whole, in context and if possible the court is to give effect to every word of the statute. The court is bound to give consistent, harmonious and sensible effect to all of the parts of the statute to the extent possible".

- 22. Thus in cases involving statutory construction, courts are not permitted to consider only a certain isolated part or parts of an act but are required to consider and construe together all parts thereof in *Pari Materia*. It is the duty of the court as far as practicable to reconcile the different provisions so as to make them consistent, harmonious and sensible. More so words in a statute must be given their natural and ordinary meaning. See *Seforoza Nyamuchoncho & Anor Vs. AG & 3 ors Civil Division Misc. Cause no. 241 of 2017 Hon. Ssekaana J citing Wicks Vs, DPP (1947) AC 362*.
- 23. In view of the above enabling authorities i shall interpret section 222 of the Succession Act together with Section 255 of the Succession Act as amended by Act no.3 of 2022. I have decided to interpret the two provisions because section 222 is the provision that relates to grant of Letters of Administration pendente lite. Section 255 on the other hand is the one that lays down the legal regime governing the lodgment and lapse of caveats. I find relevance in this section because the basis of the 4th respondents' opposition to this application is that he had lodged a caveat forbidding the grant of Letters of Administration to the 1st – 3rd respondents. The 4th respondents' action of lodging a caveat has a direct bearing to this application.

24. Upon the demise of the late Asuman Goobi, the 1st -3rd respondents applied to the Administrator General for a certificate of no objection. The same was granted on 4th May 2018. The 2nd applicant under paragraph 8 of his affidavit in support of the application deposed as follows;

8. That we later established that the children of the late Asuman Goobi had been granted a certificate of No Objection to administer their father's estate and the grantees thereof had filed an application for letters of Administration, but the 4th respondent lodged a caveat and the same were not granted.

25. According to counsel for the applicants, the issuance of the certificate of no objection was clear indication that the 1st – 3rd respondents were the right people to be granted Letters of Administration pendente lite.
26. A Certificate of No Objection issued by the Administrator General in Uganda enables the holder to apply for Letters of Administration of a deceased person's estate . It essentially signifies that the Administrator General has no objection to the holder being granted Letters of Administration. In other words it allows a nominated person to apply for Letters of Administration. It is an important document because it streamlines the process and reduces potential disputes by indicating that the Administrator General has vetted the applicant(s) and found them fit and proper to administer the estate. The question to be asked at this stage is whether the 1st-3rd respondents were fit and proper persons to be appointed administrators pendente lite. Under paragraph 9 of the 4th respondent's affidavit in reply, he states that the 3rd respondent was once convicted for intermeddling with the estate in question. Indeed the proceedings attached to the said affidavit indicate that the 3rd respondent was convicted on his own plea of guilty for intermeddling in the estate of Asuman Goobi, that he seeks to administer. Even counsel for the respondents in his submissions concedes to this fact. The Certificate of no Objection was issued on 4th May 2018 and the 3rd respondent was convicted on 18th February 2020. It looks like he

committed the said offence after being granted the certificate of no objection. According to me, the 3rd respondent lost eligibility for appointment as administrator of the estate of late Asuman Goobi upon his conviction. In the same paragraph 9 of the affidavit, the 4th respondent also accuses the 1st and 2nd respondents for disposing off estate property without authority. This was not controverted by the 1st applicant in his affidavit in rejoinder. I do find that ever since the 1st-3rd respondents obtained the certificate of no objection, some supervening events happened i.e;

- a) Conviction of the 3rd respondent
- b) Lodgment of a caveat by the 4th respondent

27. These factors put into question the eligibility and competence of the 1st-3rd respondents to ably represent the estate of the late Asuman Goobi.
28. The 2nd applicant in paragraph 8 of his affidavit in support states that the 1st -3rd respondents were issued with Certificate of no Objection and therefore are the rightful representatives of the deceased father. With due respect, and as already noted above, the Certificate of No objection is a mere recommendation by Administrator General for grant of letters of administration. It is not conclusive . In the case of Administrator General Vs. Joyce Akello (1996) HCB it was held that the Administrator General's powers are not absolute and that court has discretion to grant letters of administration to another person other than the person nominated by the Admin Gen. In the instant case, the mere fact that the 1st-3rd respondents obtained Certificate of no Objection is not a guarantee that they will eventually obtain the Letters of Administration especially in view of the subsequent occurrences of conviction for intermeddling with the estate, and the objections by the 4th respondent through lodgment of a caveat. There is a danger of the 1st -3rd respondents being appointed administrators pendente lite, and eventually the family choosing other representatives to apply for Letters of Administration.

29. The 4th respondent raised a fear (and rightly so in my view) under paragraph 14 of his affidavit in reply as follows;

14. That if court appoints the 1st -3rd respondents to be administrators pendente lite, they may fail to ably defend the suit and just enter into a non justifiable consent as they attempted to do on 16th April 2024.

30. Indeed counsel for the applicants conceded that when the matter came up for hearing on 16th April 2024, the 1st-3rd respondents had accepted to consent to the application without consulting the beneficiaries. The situation was saved when the 4th respondent appeared in court and intimated to court that he intended to oppose the application. This suspicion is compounded by the fact that the 1st -3rd respondent had not filed affidavits in reply to the application, and most importantly that the 4th respondent had not been served with the application but just appeared in court on the day it was called for hearing.
31. It is also pertinent to note that the suit that the applicants seek the 1st-3rd respondents to be appointed as administrators pendente lite, was long dismissed for want of prosecution. This can be discerned from the proceedings attached to the affidavit in reply by the 2nd applicant showing that the suit was dismissed on 22nd January 2018. Since then, no application for reinstatement of the suit was ever filed to date. It would have been prudent for the applicants to file the application for reinstatement of the suit and then file this application for consideration by court. However, the suit was dismissed in 2018 but the applicants only remembered in 2024, that they had interest in having it reinstated.

32. I have also looked at the pleadings of the suit that the applicants seek to reinstate. The suit had been filed in a Magistrate's court but a look at the plaint reveals that the applicants who were plaintiffs in that suit, sought for orders for cancellation of the certificate of title of the suit property for fraud which is jurisdiction that is only conferred unto the High court not Magistrate's courts.

Refer to section 177 Registration of Titles Act and the case of Alex Nyika & Anor. Vs.

Commissioner Land Registration. I do note that section 222 also applies where the applicants are considering to file a prospective suit. However, in the instant case as I have already observed, it is clear from the affidavit in support that the applicants intend to reinstate a suit in a court that does not have jurisdiction to entertain suits for cancellation of certificates of title. I also note that the cause of action arose in 1979 when the late Asuman Goobi got registered onto the certificate of title. Even if the applicants were to file a fresh suit in the High court which I have said has exclusive jurisdiction to entertain suits for cancellation of title, it would be barred by limitation.

33. Furthermore, the reason this application was filed was because the 4th respondent lodged a caveat against the 1st-3rd respondents' petition for Letters of Administration thereby stalling the process. Before I delve into the legal regime relating to the lodgment and lapse of caveats, I wish to reproduce the history relating to the caveat lodged by the 4th respondent. This caveat was lodged in December 2018. Upon lodgment, the process for application for Letters of Administration was halted by court. To date, no action has been taken by the petitioners nor the caveator in accordance with the law. Ordinarily, upon lodgment of a caveat, the caveator is required by law to file a suit within reasonable time to prove his claim. In default of him filing a suit, the Petitioners are supposed to file an application to remove the caveat. It looks like none of the above actions was taken by either party.

34. Section 255 (1) of the Succession Act as amended provides that

"A person who lodges a caveat under section 253 shall within fourteen days of lodging the caveat serve a copy of the caveat to the petitioner for Probate or Letters of Administration".

35. Under section 255 (2) of the same Act, where a caveat has been lodged in respect of a petition for Letters of Administration, court shall suspend the

proceedings in the matter until the caveat has been withdrawn, lapses or a suit for the removal of the caveat has been filed and determined by Court".

37. Section 255(2) of the Act goes on and states that;

"Where a caveat has been lodged in respect of a petition for probate or letters of administration court shall suspend the proceedings in the matter until the caveat has been withdrawn, lapsed or a suit for its removal has been filed and determined by Court"

38. My view is that this is what happened in the instant case, when the petition was filed and the 4th respondent lodged a caveat in December 218, the court suspended the process for letters of Administration. Ordinarily when the process has been suspended, the law gives the parties respective obligations to perform, failure of which , certain consequences occur as shall be seen below.

39. Section 255 A(1) of the Act provides that ;

"A petitioner for Probate or Letters of Administration in respect of which a caveat has been lodged shall within six months from the date the caveat was lodged, file a suit for removal of the caveat."

40. Section 255 A(2) of the Act goes on to provide as follows;

"Notwithstanding subsection (1) above, a person who lodges a caveat in respect of a petition for Probate or Letters of Administration shall within 6 months from the date the caveat was lodged, commence proceedings to prove the objections contained in the caveat."

37. My interpretation is that this provision was meant to prevent abuse of court process by caveators lodging unfounded caveats and sitting back, resulting into wastage of the deceased's estate. This can be read in section 255(3) which provides as follows;

" Where a person who lodges a caveat or a petition for Probate or LOA does not comply with sub section (1) or (2), the caveat and the Petition for Probate or Letters of Administration shall lapse."

41. In the instant case, both the petitioners and the caveator were affected by the above provisions due to inaction in one way or the other, on their respective parts. When the petitioners (the 1st -3rd respondents) filed their petition for Letters of Administration and the 4th respondent lodged a caveat, they all sat back from 2018 to date. This had implications on the Petition for Letters of Administration.
42. In the case of Ajok Patricia Vs. Jasmine Pecious Muwanguzi Gulu HCCS No. 01 of 2023, Justice George Okello succinctly discussed the legal regime relating to lodgment and lapse of caveats. He gave a purposive and exhaustive interpretation of Sec. 255 of the Succession Act as amended. After interpreting the section, he concluded as follows;
- " In the instant suit, the Plaintiff's petition for Letters of Administration does not lapse because she lodged the instant suit for removal of the caveat timeously. Had the suit not been filed within six months from the date of lodgment of the caveat, the petition would have lapsed. As for the defendant's caveat, the same cannot hold in perpetuity under the present Law. Accordingly, the defendants' caveat lapsed by operation of Law".
 - 43. The 4th respondent however, lodged his caveat as a beneficiary and heir of the estate of Asuman Goobi Byakuno. The kind of caveat lodged being a 'beneficiary caveat' is distinct from ordinary caveats which expire after 60 days from the date of service of the notice for removal of the caveat. A beneficiary caveat can only be removed by the caveator himself or

by a court order. See section 140 Registration of Titles Act and Kabiito Karamagi (Receiver/ Manager Spencon Services in Receivership) & DFCU Bank Ltd vs Yanjian Uganda Company Ltd & Native Power Company Limited HCMA No. 1202 of 2021.

Consequently, the 4th respondent's caveat seems not to have been affected, despite his failure to take action under section 255 (3) of the Succession Act as amended. However, the 1st-3rd respondents' petition for Letters of Administration lapsed for failure to take action.

44. At this point, I also wish to address the capacity of the applicants who are not beneficiaries of the estate of Asuman Goobi to bring an application for appointment of representatives of the late Asuman Goobi. Section 201 of the Succession Act provides that;

"When the deceased has died intestate, those who are connected with the deceased either by marriage or by consanguinity are entitled to obtain Letters of Administration of his estate and effects in accordance with the Act".

45. Under this section, it is my considered view that only those beneficiaries of the estate who are connected to the deceased person, are eligible to elect his legal representatives. The applicants who have no connection with the family of the late Asuman Goobi, and who are actually adversaries to the beneficiaries, cannot purport to be the ones to seek to appoint the rightful representatives of the late Asuman Goobi by filing the instant application. According to the Petition for Letters of Administration lodged in court by the 1st – 3rd respondents, the estate of the late Asuman Goobi has about 13 beneficiaries, whose interests ought to be safeguarded by all means. Any person(s) to be chosen to represent the estate of Asuman Goobi, must be a person(s) who have the interests of the beneficiaries at heart.
46. I would advise the family of the late Asuman Goobi Byakuno, to go back to the drawing board, with a view of bringing their house to order in consultation with the Administrator General in order to commence the process of administration of the estate of Asuman Goobi afresh, either by convening another family meeting in order to nominate acceptable representatives to apply for letters

of Administration, or for the Administrator General himself to apply for Letters of Administration in his capacity.

For the reasons given above, which I summarize here below;

- a) That the suit in which the applicants wish the respondents to be appointed administrators pendente lite was dismissed for want of prosecution.
- b) That one of the respondents who is among the nominees for grant of Letters of Administration was convicted by court for intermeddling into the very estate that he seeks to administer.

