

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
LAND DIVISION  
CIVIL SUIT NO.381 OF 2011**

1. AGNES NANKYA  
2. ROBERT MUWAZI ..... PLAINTIFFS  
3. NAYIGA SYLVIA

**VERSUS**

1. AMIS LUKWAGO  
2. HASSAN KIBIRIGE  
3. TWAHA KAKANDE ..... DEFENDANTS  
4. ABDU MAYANJA  
5. REHEMA NALULE  
6. SULAYITI KASULE

**JUDGMENT**

**BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA**

**BRIEF FACTS**

**Background**

The plaintiffs presented this claim for a declaration that they are the lawful owners of land comprised in Kibuga Block 33 Plot 287 at Mutundwe (hereinafter referred to as the suit land). They in addition sought orders for the removal of a caveat lodged by the defendants, a permanent injunction, vacant possession, mesne profits and costs.

At the time of filing the suit, the first plaintiff was registered on the suit land as the administrator of the estate of the late Nuwa Kiwanuka her deceased's father. She claimed to have sold the land to the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs who were unable to take possession or utilize the suit land owing to a caveat lodged against it by the

defendants. The 1<sup>st</sup> plaintiff had contested the caveat but that the Registrar of titles had declined to dislodge it and advised the plaintiffs to seek redress from court.

The defendants did not file a defence to the claim and on 29/7/2012, upon formal request an interlocutory judgment was entered in favour of the plaintiff and the matter was set down for formal proof.

Evidence was adduced both orally and by witness statements and to my mind the following are issues for determination by the court.

1. Whether the defendants had any legal justification to lodge a caveat on the suit land.
2. Whether the actions of the defendants amount to trespass on the suit land.
3. What remedies are available to the plaintiffs?

#### **ISSUE1**

According to PW1 Agnes Nankya, after the death of her father she was appointed administrator of the estate vide Adm Cause No.459/05 and issued with Letters of Administration that were admitted in evidence as **Exh.P.1**. She then procured registration as an administrator vide instrument No.KLA.464779/382010 and the relevant certificate of title was admitted in evidence as **Exh. P2**. She subsequently sold the suit land to the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs by an agreement of sale dated 12/7/10 which was also admitted in evidence as **Exh.P.3**.

Muwazi Robert who was presented as PW3 stated in his witness statement that he attempted to take possession of the land by fencing it off but that the 4th defendant removed the fence. Both PW1 & PW2 then testified that they

confirmed from the Land Registry that the defendants had lodged a caveat on the suit land. The plaintiffs presented a search letter issued by the Commissioner for Land Registration on 4/8/11 (hereinafter referred to as the Commissioner). That letter, albeit a copy, indicated that the suit land was encumbered by two caveats one of which was that of the defendants. Better still, in a letter dated 22/8/11 the Commissioner notified the plaintiffs' lawyers that she was not prepared to remove the caveat since it was one that had been lodged by defendants as beneficiaries. The notice was admitted in evidence as **Exh. P7**.

According to Sec 139(1) RTA, any beneficiary or other person claiming any estate or interest in land under operation of the Act may lodge a caveat with the Commissioner of Land Registration forbidding the registration of any person as transferee or proprietor of any instrument affecting that land. According to S.139 (3) any intending caveator must show the nature of the title under which they make the claim in the land. Further, S.140 (2) prohibits the lifting of caveats by beneficiaries due to lapse of time. It was for that reason that the Commissioner in **Exh.P.7** declined to lift the caveat and advised the plaintiff to seek court redress.

Unfortunately, counsel for the plaintiff did not attach to their pleadings the instrument that created the caveat. Therefore, the court is not in a position to understand the nature of the claim by the caveators and as such determine whether there was any justification for the caveat. The only clue would be in **Exh.P.7** in which the Commissioner states that the defendants were beneficiaries of a deceased's will. The plaintiff counteracted that claim when in her statement

she claimed that the 2<sup>nd</sup> – 6<sup>th</sup> defendants and three others had at one time filed CS.5/2011 and Misc. Application 1/11 against the plaintiff in the Chief Magistrate's Court of Mengo. Both actions were dismissed on 24/6/11 and a certified copy of the order was admitted in evidence as **Exh.P.7**. The 1<sup>st</sup> plaintiff showed that she did not know the defendants and that any claim they may have had over her late father's land, was settled when the suit they had filed against her in the Chief Magistrates Court of Mengo was dismissed on 22/6/11.

The above notwithstanding, the defendants never attempted to defend the claim. They neither filed a defence nor appeared in court when the case was called to hearing. It was for that reason that an interlocutory judgment was entered against them on 29/6/12. In law, a party who declines to defend a claim that is brought to their notice is deemed to have accepted it and the court should allow the plaintiff to prove his claim and if they do so, be granted remedy.

In the instant case, the evidence presented supports the fact that the 1<sup>st</sup> plaintiff is the registered proprietor of the suit land. According to S.59 RTA, proof of registration and the certificate of title is a notice to the defendants and the whole world that the 1<sup>st</sup> plaintiff is the lawful registered owner of the suit land. It is also evident from **Exh.P3** that the 1<sup>st</sup> plaintiff transferred her interest to the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs both who attained an unregistered interest in the suit land. I accordingly declare that the 1<sup>st</sup> plaintiff is the lawful owner of the suit land and that she did transfer her interest to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. Nothing was presented for the defendants to show why they were contesting ownership by either plaintiff. In a nutshell, there is nothing on record to justify the continued

existence of the caveat by the defendants on the suit land and I accordingly make a finding to that effect.

## ISSUE 2

It was submitted for the plaintiff that by lodging a caveat on the suit land the defendants were in an act of trespass. Counsel for the plaintiff relied on the case of **Busiro Coffee Farmers & Dealers Ltd Vs Tom Kayongo & 2 Ors HCCS.NO.532/92 (reported in 1996 Vol 3 KALR)**, which can be of persuasive value to this court. The ratio given by the late Justice Byamugisha (as she then was) in that authority is that *“Trespass to land is an unlawful interference with another person’s land”*. The court then went on to say that in order for an action in trespass to land to succeed,

*“...the claimant must be in actual possession or entitled to possession at the time of filing the action. Possession in its primary sense is the visible possibility of exercising physical control coupled with the intention of doing so either against the entire world or, against all except perhaps certain people.”*

Going by the above authority, I am of the view that a caveat would constitute an act of trespass because where it is unjustified and it constitutes an unlawful interference with another person’s interest in the land so caveated. I have already found that the 1<sup>st</sup> plaintiff is the registered owner of the suit land and that the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs also have an unregistered interest in it. Evidence was led to show that the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs were unable to procure registration into their names because of the existence of the caveat by the defendants. Also, they were unable to take up possession due to active resistance of the 4<sup>th</sup>

defendant. The fact of the caveat on the suit land and the resistance by one of the defendants would in my mind amount to an act of trespass by the defendants and I therefore find issue 2 in the affirmative.

### **ISSUE 3**

Having found that the existing caveat on the suit land is unjustified, I believe the plaintiffs are entitled to some relief as a result of any loss they may have incurred as a result of the existence of the caveat on the suit land. The plaintiffs did seek several remedies and I shall consider each separately.

It has been proved to my satisfaction that the 1<sup>st</sup> plaintiff is the registered owner of the suit land in the capacity of administrator. It has also been proved to my satisfaction that she did sell her interest to the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs and therefore the latter two also have a legitimate but unregistered interest in the suit land. I therefore declare as much.

It has also been proved to my satisfaction that the caveat that was lodged by the defendant on the suit land as instrument No. KLA.508305 of 24/7/11 was so lodged without any legal justification. It cannot be permitted to remain as an encumbrance on the suit land. I thereby issue a residual order against the Commissioner for Land Registration directing her to lift the caveat forthwith.

The plaintiffs also sought possession and mesne profits for the period that they were unable to utilize the suit land as a result of the existence of the caveat. However, not much was presented for them to show why they sought an order for vacant possession. PW1 admitted that she is not resident on the suit land and

does not utilize it either. She did state however that, the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs have not able been to use the land because the defendants have prevented them from doing so. However, PW1 then went on to say that even the defendants are not using the suit land. PW2 may have been more helpful when he stated that Abdul Mayanja the 4<sup>th</sup> defendant stopped him from taking possession of the suit land when he removed the fence that he PW2, had erected. However, he did not substantiate further on this and neither gave specifics on when the alleged actions by the 4<sup>th</sup> defendant took place.

That notwithstanding, in order to avoid unnecessary future litigation, I would allow the prayer for vacant possession, in respect of the suit land in favour the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs. And since there was some evidence that the defendants may have at some point interfered with the 2<sup>nd</sup> and 3<sup>rd</sup>'s plaintiff's' occupation. In addition I issue a permanent injunction against all six defendants restraining them from ever entering upon or interfering with the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs' occupation and enjoyment of the suit land.

Mesne profits are special damages and therefore a prayer for that remedy requires that it is both pleaded and proved to the standard required in civil matters. Both in their pleadings and testimony, the plaintiffs did not give an indicative figure for their loss which would have assisted the court in assessing what would be a reasonable figure in mesne profits. As I have already shown above, in his evidence as the buyer of the suit land, PW2 did not give the time when he was prevented from entering the suit land which would have given an indication of when his loss began to run. He also did not indicate the nature of

business or developments he had intended to carry out on the suit land which would guide the court in assessing the nature of lost income. In my view, the blanket claim of Shs.40million by counsel for the plaintiffs in his submission was not backed by any concrete evidence. In summary, mesne profits were not proved and I decline to grant them.

Having found that the defendant's actions amounted to trespass, the plaintiffs would be entitled to general damages. I hasten to add that general damages are compensatory in nature. In the case of **ASSOCIATED ARCHITECTS Vs CHRISTINE NAZZIWA (Civil Appeal No.5 OF 1981) (unreported)** it was held that the person injured must receive a sum of money that would put him as good but neither better nor worse position than before the wrong was committed. As already stated, it is not clear when the act of trespass by one or all of the defendants began. What is clear however is that the caveat was lodged in July 2011 and the defendants were requested (through their lawyers) (but declined to remove the caveat) in the notice dated 8/8/11, (see **Exh. P.3**).

It can thus be concluded that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have been unable to complete the transfer of the suit land into their names and to occupy it since August 2011. According to the sale agreement dated 12/7/10, the purchase price quoted by the first plaintiff for the suit land is shs.280million making it a considerably valuable piece of land. Much of the purchase price has been paid. I therefore grant general damages in trespass against the defendants in the sum of Shs.20million which shall be shared in the proportion of shs.5million to the 1<sup>st</sup> plaintiff and shs.15million to the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs. I also condemn the defendants collectively in costs of the suit.



In summary, judgment is entered in favour of the plaintiffs and the following orders are made:-

1. A declaration that the 1<sup>st</sup> plaintiff is the lawful owner of the land comprised in Kibuga block 33 Plot 287 at Mutundwe and that she did transfer her interest to the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs.
2. A declaration that the caveat lodged by the defendants on Kibuga Block 33 Plot 287 at Mutundwe has no legal basis.
3. An Order directing the Commissioner for Land Registration to lift/remove the caveat launched by the defendants on land known as Kibuga Block 33 Plot 287 at Mutundwe.
4. An Order of Vacant Possession in respect of Kibuka Block 33 Pot 287 at Mutundwe in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs.
5. A permanent injunction restraining the defendants from ever entering upon or interring with the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs' occupation and enjoyment of the suit land.
6. General damages in the sum of shs.20million.
7. Costs of the suit.

I so order.

**EVA K. LUSWATA**  
**JUDGE**  
**4/02/2014**