

**REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**CIVIL SUIT NO. 833 OF 2007**

**FERDINAND MUGISHA.....PLAINTIFF**

**VERSUS**

- 1. STEVEN BANYA**
- 2. THE REGISTRAR OF TITLES.....DEFENDANTS**

**BEFORE LADY JUSTICE PERCY NIGHT TUHAISE**  
**JUDGEMENT**

The plaintiff brought this suit against the defendants for orders for removal of the caveat lodged by the 1<sup>st</sup> defendant and subsequently registered by the 2<sup>nd</sup> defendant, compensation for lodging a caveat without reasonable cause, general damages, and costs of the suit.

The plaintiff's case as deduced from his pleadings is that at all material times, he was the registered proprietor of land comprised in Block 401 Plot 285 land at Bwebajja measuring approximately 1.619 acres (suit land). On 10<sup>th</sup> May 2006 the 1<sup>st</sup> defendant lodged a caveat on the plaintiff's land vide instrument no. KLA 300224. The caveat lapsed and, on application by the plaintiff, was removed from the plaintiff's land under instrument no. KLA 341338 when the 1<sup>st</sup> defendant failed to make any reply on being notified to remove it. On 8<sup>th</sup> August 2007, the 1<sup>st</sup> defendant lodged another caveat on the same land which the 2<sup>nd</sup> defendant registered vide instrument no. KLA 349281. The defendant did not swear a statutory declaration in support of his application to lodge the caveat, and the affidavit in support of the application was sworn by a different person other than the caveator, contrary to what the law required. It is the plaintiff's case that the 1<sup>st</sup> defendant has no claim or interest over the suit land and that the 2<sup>nd</sup> defendant's registration of the caveat on his land was unlawful.

The defendants' case as deduced from the pleadings is that he lawfully lodged the caveat as a person claiming interest in the suit land as purchaser of the same and that his lawyers were lawfully instructed to lodge the caveat on his behalf.

On 30<sup>th</sup> April 2008 before the case could proceed to the hearing stage, the 1<sup>st</sup> defendant withdrew the second caveat from the land vide instrument no. KLA 3744020. The trial Judge then requested Counsel to file written submissions within given time schedules on the remaining contentious issue on compensation, damages and costs. The trial Judge, Justice Anna Magezi, retired before writing the judgement. The file was passed on to me on 12<sup>th</sup> February 2013 to write the judgement. On perusing the court record, I found that it only contains the written submissions by the plaintiff's Counsel dated 28<sup>th</sup> April 2010 and filed in court on 30<sup>th</sup> April 2010. I proceeded to decide the suit under Order 17 rule 4 of the Civil Procedure Rules.

The plaintiff's Counsel addressed his submissions along two issues namely, whether the plaintiff is entitled to compensation; and whether the plaintiff is entitled to general damages and costs of the suit. He submitted for the plaintiff that the claim was properly brought against the defendant since he lodged a caveat over the suit land when he did not have a caveatable interest in the same. He prayed court to award compensation against the defendant under section 142 of the Registration of Titles Act, and that UGX 36,000,000/= (thirty six million) would be sufficient. He also submitted that the defendant's registering a caveat twice on the plaintiff's land without reasonable cause which caused the defendant monetary loss and injury entitles the defendant to general damages. Counsel also submitted for the plaintiff that he was entitled to costs since the defendant conceded to the plaintiff's claim by removing the caveat at his own volition, but after the plaintiff had filed the suit.

### **Resolution of Issues:**

On the issue of whether the plaintiff is entitled to compensation section 142 of the Registration of Titles Act stipulates that any person lodging any caveat with the registrar, either against bringing the land under this Act or otherwise, without reasonable cause, shall be liable to make to any person who may have sustained damages by lodging of the caveat such compensation as the High Court deems just and orders. From the reading of the section, the compensation is for the damages suffered.

The plaintiff pleaded in paragraph 7 of his amended pleadings that the defendant's conduct occasioned him inconvenience and loss for which he should be compensated. He accordingly prayed for compensation, among other prayers. His Counsel submitted that the defendant's registering a caveat twice on the plaintiff's land without reasonable cause caused the defendant monetary loss and injury.

It is a principle of law that damages for which a party is to be compensated must be pleaded and proved with cogent evidence by the party claiming them as being the direct result of the defendant's wrongs. The damages ought to be proved and properly assessed by court. See **Eladam Enterprises Ltd V S.G.S (U) Ltd & Others Civil Appeal No. 20 of 2002**.

In this case, though the plaintiff pleaded and prayed for compensation, there was no evidence on record to assist court properly assess what compensation would be just in the circumstances. Since the record shows that the case was not determined on the merits, this court was also not in position to determine whether or not the 1<sup>st</sup> defendant had caveatable interest when he lodged the caveats in question. The submissions of the plaintiff's Counsel on the matter can only be regarded as evidence from the Bar which cannot be relied on as justification for compensation pleaded by the plaintiff. I will for those reasons not award any compensation.

On whether the plaintiff is entitled to general damages, the decision in **Kampala District Land Board & George Mitala V Venansio Babweyana, Civil Appeal No. 2 OF 2007** is well settled law on award of damages by a trial court. It is trite law that damages are the direct probable consequences of the act complained of. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering.

It was submitted for the plaintiff that the plaintiff suffered loss and could not use his land for the eighteen months that the plaintiff's land was unreasonably caveated by the 1<sup>st</sup> defendant. He was only able to secure a bank loan using the same land as security after the caveats were removed. It is deduced from the

court record, particularly the amended plaint and its annexures **A, B and E** that the plaintiff also took steps to move the registrar of titles to remove the caveat, including filing this suit against the defendants, In **Assist(U) Ltd V Italian Asphalt & Haulage & Another HCCS No. 1291/1999**, unreported, Kiryabwire J, physical inconvenience was held to be a form of damage. The plaintiff cannot be without remedy of an award of general damages in the given circumstances where he clearly suffered inconveniences trying to remove the caveat and file a suit against the 1<sup>st</sup> defendant. An award of Ugx 15,000,000/= (fifteen million) as general damages in favour of the plaintiff would be appropriate, considering that the land is in the outskirts of Kampala, at Bwebajja.

On costs of the suit, section 27 of the Civil Procedure Act stipulates that the court has discretion to determine costs and against whom. In this suit the defendant removed the caveat at his own volition, but after the plaintiff had filed the suit. This mitigates the damages but does not remove the costs incurred by the plaintiff in filing and pursuing the suit.

Accordingly, judgement is entered for the plaintiff against the defendant for orders and declarations that:-

- i) The plaintiff is awarded general damages of Ugx 15,000,000/= (fifteen million).
- ii) The plaintiff is awarded the costs of this suit.

It is so ordered.

**Dated at Kampala** this 18<sup>th</sup> day of April 2013.

Percy Night Tuhaise

**JUDGE.**