

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT JINJA**  
**HCT-03-CV-MC-0027-2022**

**MAZIMA COMMUNITY DEVELOPMENT INITIATIVE LTD :::::  
APPLICANT**

**VERSUS**

**1. BALIKUDEMBE MAKONZI PETER  
2. THE COMMISSIONER LAND  
REGISTRATION::::::::::::RESPONDENTS**

**BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE**

***Application for Removal of Caveat-***

***Held: Application Granted with Orders set forth in this Ruling***

**RULING**

This Ruling follows an Application brought under **Sections 140(1), 142, 145 and 188 of the Registration of Titles Act Cap 230** and **Order 52 rules 1, 2 & 3 of the Civil Procedure Rules S.I 71-1** and all enabling laws seeking for orders that:-

- a) The 1<sup>st</sup> Respondent show cause why his caveat vide Instrument Number JJA- 00018611 lodged on the Applicant's land comprised in Kagoma, Jinja FRV 1136, Folio 10, Block 4. Plot 217 situate at Kabowa should not be removed from the Register.
- b) An order directing the 2<sup>nd</sup> Respondent to remove the caveat lodged by the 1<sup>st</sup> Respondent on land comprised in Kagoma, Jinja FRV 1136, Folio 10, Block 4, Plot 217 situate at Kabowa.
- c) An Order that the 1<sup>st</sup> Respondent pays compensation to the Applicant for the loss and damage occasioned by the said caveat and for lodging the aforesaid caveat without lawful or reasonable cause.
- d) An Order that the 1<sup>st</sup> Respondent pays the costs of this Application.

The grounds upon which this Application is premised are that:-

1. The Applicant Company is the lawful owner of the suit land comprised in Kagoma, Jinja FRV 1136, Folio 10, Block 4, Plot 217 situate at Kabowa having purchased the same free from all encumbrances from the registered proprietors (Namuli Milly and Luyinda Emmanuel) and

the said registered proprietors signed transfer forms in favour of the Applicant.

2. Before the Applicant could transfer the land into its name, the 1<sup>st</sup> Respondent lodged a caveat on the land on 21<sup>st</sup> June 2019 vide Instrument Number JJA-00018611 without lawful or reasonable cause and the 1<sup>st</sup> Respondent has since the lodgment of his caveat never taken any step to prove his claim on the suit land.
3. The 1<sup>st</sup> Respondent's Caveat has since prevented the transfer of the land into the Applicant's name and this has caused loss and damage to the Applicant.

The above stated grounds are reiterated in the Affidavit in Support of the Application deposed by **Muzigo Morrison Rosette Kawaaluko**, a Director in the Applicant Company, the gist of which are that :-

1. In 2019, the Applicant Company after carrying out all the requisite due diligence, purchased the suit land comprised in Kagoma, Jinja FRV 1136, Folio 10, Block 4, Plot 217 situate at Kabowa from Namuli Milly and Luyinda Emmanuel (minors) through their lawful guardian Julie Ranee Ditty. **(A copy of the Purchase Agreement and Guardianship Order are hereto attached as Annexures A1 and A2 respectively).**
2. Before purchase, the Applicant carried out a search and discovered that the Respondent was the registered proprietor of the suit land, having been registered on 15<sup>th</sup> March 2012 vide Instrument Number 464667.
3. On 10<sup>th</sup> March 2016, the Respondent transferred the suit land into the names of a one Force Kappa Joselyne vide Instrument Number JJA-0006511. **(A copy of the Certificate of Title is hereto attached as Annexure B).**
4. After about a year of being the registered proprietor, on 1<sup>st</sup> February 2017, the said Force Kappa Joselyne transferred the suit land into the names of Namuli Milly and Luyinda Emmanuel. **(A copy of the special certificate of title is hereto attached as Annexure C).**
5. The Applicant Company then purchased this land from the said Namuli Milly and Luyinda Emmanuel who signed transfer forms in favour of the Applicant. **(Copies of the Transfer Forms are hereto attached as Annexure D).**
6. On 21<sup>st</sup> June 2019 before the Applicant's transfer could be affected, the Respondent lodged a caveat on the suit land vide Instrument Number JJA- 00018611.

7. The Respondent's caveat has been registered on the suit land for 03 years now, but the Respondent has not carried out any essential step to show cause why his caveat should not be lapsed/removed.
8. She was advised by her Lawyers of KBW Advocates whose advise she verily believes to be true that the primary objective of a caveat is to give the caveator temporary protection and it is not the intention of the law that the caveator should relax and sit back for eternity without taking positive steps to handle the controversy, so as to determine the rights of the parties affected by its existence.
9. The Respondent's caveat has unreasonably affected the Applicant as it has prevented the transfer of the suit land into her name for 03 years now.
10. The Applicant has since purchase of the suit land up to date been in possession, occupation and enjoyment of the suit land.
11. The suit land is duly developed with the Applicant's headquarters, the Applicant's Charitable Pre-School known as Green Donkey, a Vocational Training Centre and a Community Development Centre.
12. The 1<sup>st</sup> Respondent's caveat has caused tremendous loss and damage to the Applicant whose directors have made various trips from the Netherlands to Uganda in a bid to regularize the particulars of their lawfully purchased land.
13. The 1<sup>st</sup> Respondent's caveat has also led the Applicant Company to lose donor funding because the Applicant is unable to effectively provide accountability to its funders before the land is transferred into its name; and the Respondent who transferred this land to Force Kappa Joselyne in 2016 no longer has any caveatable or other interest in the suit land whatsoever.
14. She is well aware that the Respondent has no valid grounds whatsoever for his caveat not to be lapsed/removed; and it is just and equitable that this Application be granted.

**In reply**, the 1<sup>st</sup> Respondent **Balikuddembe Makonzi Peter** in his Affidavit in Reply deponed that with the help of his lawyers, M/S. Tamale & Co. Advocates, has read and understood the contents of **MA Cause No. 0027 of 2022** and the Affidavit in support, seeking to remove the caveat he lodged on land described as Kagoma, Jinja FRV 1136, Folio 10, Block 4, Plot 217 situate at Kabowa and his lawyers have advised him which advice he verily believe to be true that it has no merit and should be dismissed with costs to him.

1. That there are matters of fraud to be determined by this Honorable Court and they cannot be decided based on mere Affidavit evidence. In the Statutory Declaration in support of his Caveat lodged under Instrument No. JJA-00018611, he specifically raised complaints of fraud against the Applicant, Force Kappa Joselyn, Namuli Mily and Luyinda Emmanuel, which can only be effectively resolved through an ordinary suit. **Copies of the Caveat and the Statutory Declaration are attached hereto and collectively marked as Annexure "A".**
2. In reply to paragraphs 2 and 5 of the Affidavit in Support of the Application, that at the time the Applicant allegedly bought the suit land he had several developments on it including one incomplete permanent house, two semi-permanent houses, a banana plantation, a plantation for eucalyptus trees and a family grave site; and that, the foregoing developments constituted notice to the Applicant of his interest/claim to the suit land.
3. In reply to paragraphs 2, 3, and 4 of the Affidavit in Support of the Application, he was registered as proprietor of the suit land on 15" March, 2012 under Instrument Number 464667. **(A Copy of the Certificate of Title is attached hereto marked "B".)**
4. In further reply to paragraphs 2, 3, and 4, that a search at the Land Registry does not suffice as due diligence. Prior to the Applicant's alleged purchase of the suit land, his dispute with Force Kappa Joselyn over the suit land was notoriously known in the community. She fraudulently transferred the suit land into her names after conniving with a one David Musenze to steal his Certificate of Title and falsely cause his arrest and detention on trumped up charges; and he reported the theft of his Certificate of Title by both David Musenze and Force Kappa Joselyn to Jinja Police Station under CRB 604/2014 and all this information was readily accessible by any diligent purchaser.
5. After he was falsely imprisoned at the behest of Force Kappa Joselyn, he wrote to the Police from Jinja Prison and gave a copy of the letter to the Registrar of Titles at Jinja, complaining about Force Kappa Joselyn's plot to fraudulently take over his land. **(Copies of my Letter to the Police and Registrar of Titles Letter and the Police Letter reflecting my reported case dated 31<sup>st</sup> March, 2014 are attached hereto and marked "C and "D" respectively).**
6. In specific reply to paragraphs 4 and 5 of the Affidavit in support of the Application, although he was wrongfully detained in Jinja Prison at the time Force Kappa Joselyn transferred the suit land into her name on 10<sup>th</sup> March 2016, he had already reported her to the Police and notified

the Registrar of Titles at Jinja. That he neither sold the suit land to Force Kappa Joselyn nor transferred it into her name and that, Force Kappa Joselyn's purported transfer of the suit land into her name was illegal, null and void.

7. In further reply to paragraphs 2 and 5, of the Affidavit in support of the Application Force Kappa Joselyn did not have any title in the suit land and she did not lawfully pass any title to Namuli Milly and Luyinda Emmanuel.
8. In reply to paragraphs 2 and 6 of the Applicant's Affidavit in support of the Application, that the Purchase Agreement (**Annexure "A1"** to the Affidavit in support of the Application) is between the Applicant and a one Julie Ranee Ditty and not Namuli Milly and Luyinda Emmanuel.
9. In further reply to paragraph 6 of the Applicant's Affidavit, that the entire transaction was fraudulent, illegal, null and void because the alleged Vendor in the Agreement is Julie Ranee Ditty who has never held title to the suit land and there is no indication that the purported transaction had been approved by Court as required by law for property belonging to minors.
10. In specific reply to paragraphs 7, 8, 9, and 10 of the Affidavit in support of the Application, that, a caveat is a mechanism, legally provided for by which he is entitled to protect his interest in the suit land from being fraudulently or illegally alienated.
11. In specific reply to paragraph 11 of the Affidavit in Support of the Application, notably, none of the Applicant's predecessors-in-title ever held possession of the suit land and even the Applicant unlawfully and wrongfully acquired possession of the suit land in total disregard of his preexisting rightful claim and interest in the suit land; and he had already instructed his lawyers, M/S. Tamale & Co. Advocates to take out a suit in this Honorable Court seeking for recovery of the suit sand. **A copy of the notice of intention to sue is attached hereto marked Annexure "E".**
12. In specific reply to paragraphs 12, 13 and 14 of the Affidavit in support of the Application, at the time the Applicant claims to have bought the suit land, he had an incomplete permanent house, two semi-permanent houses and his family grave site on that land and when it was constructing its buildings on the land, the Applicant callously graded away the graves and his other properties. That faced with this state of affairs, the caretakers of the land left and at this time, he was still incarcerated in Kirinya Prison, but immediately upon his release he traced for the Applicant's representatives to no avail and he

approached the Local Authorities but they also denied knowledge of the Applicant's interest in his land.

13. In further reply to paragraphs 12, 13 and 14 of the Affidavit in Support of the Application, the Applicant knew or ought to have known about his interest in the suit land and any loss allegedly suffered by the Applicant is self-inflicted.
14. In further reply to paragraphs 13 and 14 of the Affidavit in Support of the Application, it is him who has suffered immeasurable loss having been fraudulently illegally dispossessed of his land and having the graves of his deceased family members desecrated by the Applicant.
15. In reply to paragraph 15 of the Affidavit in support of the Application, he never transferred his title to the suit land to Force Kappa Joselyn, she illegally and fraudulently got herself registered onto the Certificate of title and to the Applicant's knowledge she is the subject of an inquiry/investigation by the State House Land Department.
- 16.** In further reply to paragraph 15 of the Affidavit in support, the State House Land Department convened fact finding meetings on 18 February, 2019 and 5<sup>th</sup> March, 2019, and some of the Applicant's directors attended the former, but Force Kappa absconded while the latter one was attended by himself, some of the Applicant's directors and Force Kappa at which meeting she admitted to have fraudulently taken his land. **The report by the State House Land Department in the matter is yet to be released. A copy of the Invitation Letter by the State House Land Department is attached hereto and marked "F."**
17. In reply to paragraphs 16 and 17 of the Affidavit in support, he verily believe that it is only fair, equitable and in the interest of Justice that this Application be dismissed with Costs.

**In rejoinder**, the Applicant deponed that:-

1. The 1<sup>st</sup> Respondent's Affidavit in Reply is misconceived and is full of deliberate falsehoods tactfully stated with the sole purpose of misleading this Honourable Court.
2. In specific reply to Paragraph 3 of the 1<sup>st</sup> Respondent's Affidavit in Reply which is denied, **MA No. 0027 of 2022** is an Application for removal of the caveat lodged on the Applicant's land comprised in in Kagoma, Jinja FRV 1136, Folio 10, Block 4, Plot 217 situate at Kabowa

lodged by the 1<sup>st</sup> Respondent on 21 June 2019 (03 and a half years ago).

3. In further response thereto, that she is advised by her lawyers whose advice she verily believe to be true that the cause of action in **MA No. 0027 of 2022** is not based on fraud and that an Application for removal of a caveat is best handled through a Miscellaneous Cause and not through an ordinary suit as wrongly alleged by the 1<sup>st</sup> Respondent.
4. The contents of Paragraph 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 are all denied; and in specific response thereto, legally, a caveat is meant to give a caveator temporary protection and as such, the caveator should relax and sit back for eternity without taking positive steps to handle the controversy, so as to determine the rights of the parties affected by its existence.
5. In further response thereto, the 1<sup>st</sup> Respondent was under a legal obligation to commence a suit to enable Court determine the rights of the parties affected by his caveat but he has for 03 and a half years sat back and taken no steps whatsoever to the detriment of the Applicant.
6. The 1<sup>st</sup> Respondent's unfounded allegations of fraud and illegality which are denied ought to have been raised in a suit filed immediately after the lodgment of his caveat but not in this Application.
7. The Respondent has seriously abused the temporary protection accorded to him by the caveat and as a result, the Applicant has been gravely affected as they have failed to get registered on the Certificate of Title and cannot use their lawfully acquired land to obtain facilities from banks.
8. The 1<sup>st</sup> Respondent is guilty of inordinate delay of taking steps to ensure their controversy with the Applicant in relation to the suit land is determined by a Court of Competent Jurisdiction.
9. The Applicant cannot keep waiting for eternity until when the 1<sup>st</sup> Respondent decides to go to Court to prove his dubious and false allegations contained in Paragraph 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 of his Affidavit in Reply.
10. This is a proper case for this Honourable Court to Order the removal of the 1<sup>st</sup> Respondent's caveat on the suit land; and the Applicant is in possession of the suit land and has been in possession since 19<sup>th</sup> April 2018 when the land was purchased from the current Registered Proprietors.

11. The Applicant has developed the suit land with its headquarters and there has never been any two semi-permanent houses or a graves site on the suit land.
12. The 1<sup>st</sup> Respondent's caveat has prevented the Applicant from having the land transferred into its name.
13. The Applicant purchased this land on 19<sup>th</sup> April 2018 and the 1<sup>st</sup> Respondent lodged his caveat in June 2019, being almost a year after the Applicant's purchase and possession of the land.
14. The 1<sup>st</sup> Respondent's unproven and false allegations and/or grievances contained in Paragraph 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 of his Affidavit in Reply are all made against third parties and not against the Applicant.
15. In specific response to Paragraph 18 and 19 of the Affidavit in Reply, the investigations by the State House Land Department were concluded in 2019 in favour of the Applicant.
16. It is just and equitable that the 1<sup>st</sup> Respondent's caveat vide Instrument Number JJA-00018611 be removed from the Register and the Applicant be compensated for the damage occasioned by this caveat.

## **REPRESENTATION**

When this Application came before me for hearing, the Applicant was represented by Counsel Emmanuel Kirya of KBW Advocates, while the 1<sup>st</sup> Respondent was represented by Wasswa Simon of M/S. Tamale & Co. Advocates. The second Respondent never filed an Affidavit in Reply to this Application although they were effectively served, so the Application proceeded exported against them. The Applicant and 1<sup>st</sup> Respondent were directed to file Written Submissions and they have all complied. I have analyzed the same and relied on them in this Ruling.

## **BACKGROUND**

The background according to learned counsel for the Applicant is that on 15<sup>th</sup> March 2012 vide Instrument Number 464667, the 1<sup>st</sup> Respondent became the 1<sup>st</sup> registered owner of the suit land. The 1<sup>st</sup> Respondent transferred the suit land to an on Force Kappa Joselyn.

On 10<sup>th</sup> March 2016 vide Instrument Number JJA-0008511, Force Kappa Joselyn became the registered proprietor of the suit land. Force Kappa Joselyn then sold the suit to Namuli Milly and Luyinda Emmanuel. On 1<sup>st</sup> February 2017 vide instrument number JJA-0011511, Namuli Milly and



Luyinda Emmanuel became the registered proprietors of this land. On 19<sup>th</sup> April 2018, Namuli Milly and Luyinda Emmanuel through their guardian a one Julie Rane Ditty sold this land to the Mazima Community Development Initiative Ltd (the Applicant herein).

On 19<sup>th</sup> April 2018, the Applicant took possession of the suit land and developed it by constructing there its headquarters, a charitable Pre-School known as Green Donkey Pre-School, a Vocational Training Centre and a Community Development Centre. On 21<sup>st</sup> June 2019, the 1<sup>st</sup> Respondent lodged a Caveat on the suit land vide instrument number JJA-0001. The Applicant's efforts to transfer the land into its name have been futile because of the 1<sup>st</sup> Respondent's caveat.

**On the other hand**, the background according to learned counsel for the 1<sup>st</sup> Respondent is that the Applicant brought this Application under **Sections 140(1), 142, 145 and 188 of the Registration of Titles Act Cap. 230, and O.52 rr.1, 2 & 3 of the Civil Procedure Rules S.I 71-1** seeking for orders inter alia that the 1<sup>st</sup> Respondent shows cause why his caveat lodged on land comprised in Kagoma, Jinja FRV 1136, Folio 10, Block 4, Plot 217 situate at Kabowa vide Instrument Number JJA-00018611 should not be removed.

The 1<sup>st</sup> Respondent filed an Affidavit in Reply to the Application on the 19<sup>th</sup> September, 2022 wherein he set out the grounds in opposition to the Application. The Applicant's Rejoinder was filed on 11<sup>th</sup> October, 2022.

## **THE LAW**

**Section 140(1) of the Registration of Titles Act** reads that:-

***“Notice of caveat to be given; lapse of caveat, etc.***

*(1) 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 the caveat has been lodged; and that applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor 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 costs as to it seems fit”.*

**Section 142 of the Registration of Titles Act**

***“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 145 of the Registration of Titles Act**

***“Removal of caveat no longer affecting lands***

*When a caveat has been withdrawn under section 139, or has lapsed under section 140, or has otherwise ceased to affect the lands or any interest in the lands in respect of which it was originally lodged, the registrar shall cause the caveat to be removed from the Register Book and shall enter in the margin of the original entry of the caveat the date of that removal”.*

**Section 188 of the Registration of Titles Act**

***“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**

In order to resolve this Application, I have carefully analyzed it the Affidavit in Support thereof, Affidavit in Reply by the 1<sup>st</sup> Respondent and Affidavit in Rejoinder. I have also examined the law under which this Application was brought and the submissions of both sides. I agree with the two issues raised by learned counsel for the 1<sup>st</sup> Respondent as follows:-

1. Whether the 1<sup>st</sup> Respondent's Caveat should be removed?
2. What are the available remedies?

**Issue 1: Whether the 1<sup>st</sup> Respondent's Caveat should be removed?**

In their written submissions, learned counsel for the Applicant argued that the caveat which is the basis of this Application was lodged under **Section 139 (1) of the Registration of Titles Act** which provides as follows;-

*" 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 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."*

They relied on the case of **Rutungu Properties Limited vs. Linda Harriet Carrington & Another, Civil Appeal No. 61 of 2010**, where the Court of Appeal held;-

*"a) That 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 thoughts of the parties affected by its existence;*

*b) That it is well settled that a caveat acts as statutory injunction which fetters a registered proprietor from dealing with his property and exercising all the rights conferred upon him by the Code. Because of its far reaching effect, it is vital that claims made by the caveator are enforced by action without undue delay;*

*C) The caveat under the Torrens system has often been likened to a statutory injunction of an interlocutory nature restraining the caveatee from dealing with land pending the determination by the court of the caveator's claim to title over the land, in an ordinary action brought by the caveator against the caveatee for that purpose.*

*d) In the case of **Teo Ai Choo vs. Leong Sze Hian [1982]2 MLJ 12**, Sinnathuray J, directed the removal of a caveat because of a delay of eleven months during which period no action had been filed. The Court emphasized that delay was the sole reason for the removal of the caveat in that case".*

That in reaching the said findings, the Court of Appeal relied on the case of **Boyes vs. Gathure (1969) EA 385, Lim Ah Moi vs. Ams Periasamy**

**Suppiah Pillay Civil Appeal No. A-2-641-1995**, and **Eng Mee Young and Others vs. Lethchumanan s/o Velayutham [1980] A.C 331**. That their Lordships in **Rutungu Properties Limited vs. Linda Harriet Carrington & Another (supra)** further held that “the Respondent as a caveat “must” prove the following for his/her caveat not to be vacated;-

- a) *The Caveator has sufficient grounds to maintain the caveat:*
- b) *The Caveator has brought an ordinary action timeously against the caveatee; and*
- c) *The balance of convenience lies in maintaining the caveat rather than its removal.”*

The Applicants further argued that it is a well-established principle that where a caveator's pleadings have allegations of illegality and fraud on how the Applicant became proprietor of the land, he ought to have filed a suit by the time an application for removal of caveat is brought. **[See: *Amba Venture Limited v Sembatya Abubakali & Anor HCMA No.0164 of 2019; Hunter Investments Ltd v Simon Lwanyaga & Anor HCMC No.0034 of 2012*]**

In addition, that their Lordships in **Rutungu Properties Limited vs. Linda Harriet Carrington & Another (supra)** which was a case about registered land comprised in Mailo Register 395 Plot 1291, land at Sekiunga, the Court of Appeal held that a delay of 15 months from the date of registration of the caveat until determination of the that the Application in inordinate delay and trial Court was Caveator/Respondent had conducted themselves in a dilatory manner and such conduct must be discouraged as it breeds abuse of the caveat scheme.

They cited **Section 22 (1) of the Registration of Title's Act Cap 230** which provides that;-

*"after the expiration of one month from the receipt of a caveat that caveat shall be deemed to have lapsed, unless the person by whom or on whose behalf it was lodged within that time has taken proceedings in a court of competent jurisdiction to establish his or her title to the estate or interest specified in the caveat, and has given written notice of the proceedings to the registrar, or has obtained and served on the register an injunction or order of the High Court... "*

And **Section 142 of the Registration of Title's Act Cap 230** which provides that;-

*"Any person lodging any caveat with the registrar, either against brining 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."*

They argued that in the instant case, the 1<sup>st</sup> Respondent lodged a Caveat on the suit land vide Instrument Number JJA-0001 on 21<sup>st</sup> June 2019, a period of 40 months (3 years and 40 months) has passed ever since the 1<sup>st</sup> Respondent lodged a caveat on the suit land; and for 40 months now, the Applicant has sat back for eternity and done nothing at all to ensure that the false claims made in his caveat are determined by Court timelessly through an ordinary suit as required by law.

Further, that in his Statutory Declaration in Support of his caveat dated 17<sup>th</sup> April 2019 which is attached to his Affidavit in Reply to his Application under Paragraph 3 thereof of **Annexure A**, the 1<sup>st</sup> Respondent makes various false and unknown allegations of fraud and illegality against his successor in title, a one Force Kappa Joselyn.

Similarly, that in his Affidavit in Reply to this Application, the 1<sup>st</sup> Respondent also makes several wild, unfounded and false allegations of fraud against the said Force Kappa Joselyn and the Applicant herein and yet he has for 40 months now not given a Court of competent jurisdiction a chance to hear and determine his claims. That the Court of Appeal in **Rutungu Properties Limited vs. Linda Harriet Carrington & Another (supra)** has already held that such conduct of the 1<sup>st</sup> Respondent must be discouraged as it is an abuse of the caveat scheme wherein a caveat must give the caveator only temporary protection.

They therefore submitted that the 1<sup>st</sup> Respondent is in clear abuse of his legal duty to have brought an action to enforce his claim timelessly and/or without undue delay. That a delay of 40 months is so severe that it cannot be excused and must not be encouraged.

Further, that the 1<sup>st</sup> Respondent's claims and allegation are not directly made against the Applicant herein. The 1<sup>st</sup> Respondent's unproven claims of fraud are made against a one Force Kappa Joselyn who is the 1<sup>st</sup> Respondent's predecessor in title over the suit land who the Applicant has never seen or dealt with.

In addition, that the 1<sup>st</sup> Respondent was the 1<sup>st</sup> registered owner of the suit land and after him. The land has changed ownership 3 times as elaborated under Paragraph 2 herein. The 1<sup>st</sup> Respondent has never challenged the

proprietorship of the suit land in any Court and therefore has no reasonable cause whatsoever of lodging his caveat. The 1<sup>st</sup> Respondent's unusual and protracted caveat has prevented the Applicant from becoming the Registered proprietor of the suit land for 40 months now and yet the Applicant has since 19<sup>th</sup> and has developed it by constructing there its headquarters, a charitable Pre- April 2018, been in possession of the suit land School known as Green Donkey Pre-School, a Vocational Training Centre and a Community Development Centre.

They contended that as disclosed in Paragraphs 13 and 14 of the Affidavit in Support of this Application deponed by Muzigo Morrison Rosette Kawaaluko, the 1<sup>st</sup> Respondent's caveat has caused tremendous loss and damage to the Applicant Company which has for 40 months now lost donor funding due to its inability to provide proper accountability to its funders before the land is transferred into its name.

In the circumstances, that the balance of convenience lies in favour of removing the caveat than in maintaining it since the 1<sup>st</sup> Respondent simply lodges a caveat and decided to sit back on his laurels for eternity in the hope that his alleged rights on the suit land are forever protected by this caveat.

**In Reply**, it was submitted by learned counsel for the 1<sup>st</sup> Respondent that the 1<sup>st</sup> Respondent's Caveat should not be removed. They concurred with the Law under which the instant Application was brought, however, they specifically submitted on **Section 142 of the Registration of Titles Act** which provides for compensation where a caveat is lodged without reasonable cause.

That in his Affidavit in Reply, the 1<sup>st</sup> Respondent ably demonstrated that he was previously the registered proprietor of the suit land until he was fraudulently dispossessed of the same and he lodged the Caveat so as to protect his interest in the suit land. **See: paragraphs 6 and 13 of the Affidavit in Reply.**

Further, that the 1<sup>st</sup> Respondent had a caveatable interest and thus, sufficient reasonable cause to lodge the Caveat on the suit land, hence, the Applicant is not entitled to any compensation; and that the grounds relied upon by the 1<sup>st</sup> Respondent to show why his caveat should not be removed are enumerated in his Affidavit in reply. That the Affidavit in Reply raises a number of serious legal matters which, cannot be competently and judiciously resolved in an Application of this nature, but rather, would require an ordinary suit. That the matters so raised by the 1<sup>st</sup> Respondent were not

specifically addressed and/or rebutted by in the Applicant's Affidavit in Rejoinder.

In addition, that under paragraph 3 of the Affidavit in Reply, the 1<sup>st</sup> Respondent points out that in the Statutory Declaration accompanying his Caveat, he raised complaints of fraud against the Applicant and its alleged predecessors in title. That the particulars of this Fraud and other illegalities are elucidated in inter alia, paragraphs 5, 7, 11, and 12 of the Affidavit in Reply.

That the 1<sup>st</sup> Respondent contended that the allegations of fraud are very serious and can only be adjudicated upon in an Ordinary Suit as was highlighted by the Supreme Court of Uganda in the case **of Kampala Bottlers Ltd v Damanico (U) Ltd (Civil Appeal 22 of 1992) [1993] UGSC 1** when it held that; *"Fraud is very serious allegation to make; and it is; as always, wise to abide by the Civil Procedure Rules Order V Rule 2 and plead fraud properly giving particulars of the fraud alleged."*-Per Platt JSC.

That the Court of Appeal of Uganda went further in the case of **Yahaya Walusimbi vs. Justine Nakalanzi & 4 Ors CA MA No. 386 of 2018** and posited that; *"Fraud cannot be proved by affidavit evidence"*.

That in the Applicant's Affidavit in Rejoinder, the complaints of Fraud raised in the Affidavit in Reply are but only generally denied without any iota of credible evidence in rebuttal. This in fact leaves the 1<sup>st</sup> Respondent's evidence unchallenged and further highlights the need for this Honourable Court to investigate the Applicant's Fraud as alluded to by the 1<sup>st</sup> Respondent. That in paragraph 9 of the Affidavit in Rejoinder, it is wrongly averred that the 1<sup>st</sup> Respondent should not have raised fraud and illegality in the instant application, however, although they agree that fraud and illegality can only be properly adjudicated upon in an ordinary suit, this does not bar the 1<sup>st</sup> Respondent to bring the same to the Court's attention even in an Application of this nature.

That it goes without saying that, it is the Applicant's fraudulent and illegal acts/omissions and its predecessors in title which formed the basis of the 1<sup>st</sup> Respondent's Caveat, hence, it was pertinent for him to raise the same in this Application. They reiterated their earlier submission that although, the fraud and illegalities complained about by the 1<sup>st</sup> Respondent against the Applicant were competently brought to Court's attention in the Affidavit in Reply; they cannot be properly adjudicated upon in the instant Application.

That in paragraphs 11 and 12 of the Affidavit in Reply, the 1<sup>st</sup> Respondent impugns the legality of the entire transaction upon which the Applicant's purported interest in the suit land is premised. In those paragraphs, the 1<sup>st</sup> Respondent depones to the effect that the purchase transaction pursuant to which the Applicant claims to have obtained interest in the suit land was illegal, fraudulent and null and void because the alleged vendor, a one Julie Ranee Ditty had no Capacity to sell the suit land. That this evidence stands unrebutted by the Applicant and they submitted that the same should be taken as having been admitted; and referred to the authority of **Samwiri Massa vs Rose Achen (1978) HCB 297** where it was held that “*where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are accepted*”.

That it is trite law that property belonging to a minor cannot be disposed of without sanction from Court and being a biological parent or guardian of a child does not give one carte blanche to deal in a minor's property extra legally; otherwise, such transaction is illegal and *void ab initio*; and referred to the cases of **In Re Trevor Mugumu (Child) Family Cause No. 68 of 2019 and Re Onen Cliff Mills & Laker Joy Onen (Minors) Miscellaneous Civil Application No. 0022 of 2018**. That in the **Trevor Mugumu Case (Supra)**, Court held that:-

*“While most decisions are made on behalf of a child by either a parent or guardian, for example decisions to seek medical assistance, decisions on accommodation, among others, being a biological parent on its own does not automatically entitle a parent to deal in the property of his or her minor child because ownership rights are exclusively person to holder (see Article 26 cited above). To harness the rights of a child to own property and to benefit there from without jeopardizing his or her welfare, courts have granted Guardianship orders to biological parents and other people who have demonstrated that their intention is for the welfare of the children who Own property...” (Emphasis added)*

Further, that in the **Re Onen Cliff Mills & Laker Joy Onen (Minors) Case (Supra)** Justice Stephen Mubiru held that:-

*“The guardian, by virtue of that status, is authorized to make legal, financial, shelter, education, food and health care decisions for the ward, but may be required to seek court approval for various decisions, especially those regarding the investment and disposal of the property of the ward...” The learned Judge further held that; “Where the child has real property to his or her name, the guardian should be capable of taking control over the child's*



*real and personal estate, and make decisions in the best interests of the child. She should be able to keep safely the property of the child... She [the guardian] must be capable of not permitting any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the court..."*

That contrary to the Law, in the impugned transaction, the said Julie Rane Ditty had no legal guardianship Court Order specifically allowing her to sale the suit land whose registered proprietors to wit, Luyinda Emmanuel and Namuli Milly were both minors at the time. That this is an illegality which goes to the root of the entire transaction upon which the Applicant's purported interest in the suit land is premised. ***Makula International Ltd v Eminence Cardinal Nsubuga & Anor (SC Civil Appeal No.4 of 1981) [1982] UGSC***

*"A court of law cannot sanction what is illegal, an illegality once brought to the attention of Court, overrides all questions of pleadings including any admission thereof and court cannot sanction an illegality". We humbly submit that this illegality necessitates an investigation by this Honourable Court in a full trial."*

They submitted that the illegality highlighted above necessitates an investigation by this Honourable Court in a full trial.

Further, that they were alive to the legal position that a caveat is only meant to act as an interlocutory protection to the caveator, however, this principle does not apply in isolation, but rather in tandem with the peculiar facts of each case. That in the Applicant's submissions reference was made to the case of ***Rutungu Properties Limited vs. Linda Harriet Carrington & Anor CACA No. 61 of 2010.***

They contended that the facts of the ***Rutungu Properties Limited case (supra)*** are starkly distinguishable from the facts of the present case. In that case after paying the purchase price, the caveators lodged a caveat on the suit land. But thereafter, they demanded for a refund from the vendor; however, they did not withdraw their caveat. Court found that the Respondents had not brought an action to enforce their claim in time because they had lost interest in the land and therefore the balance of Convenience was not in their favour.

On the contrary, that in the instant case, the 1<sup>st</sup> Respondent in his Affidavit in Reply details how, in an elaborate scheme, he was fraudulently dispossessed of his Land first, by a one Force Joselyn Kappa and now by the Applicant. This

evidence is borne out in inter alia, paragraphs 8, 9, 10, 11, 12, 14, and 15 of the Affidavit in Reply. To avert any further unlawful transfers, he lodged his caveat on 21<sup>st</sup> of June, 2019. He however, did not merely sit back as falsely alleged in paragraph 8 of the affidavit in rejoinder but rather, as the 1<sup>st</sup> Respondent avers in Paragraph 14 of the affidavit in reply he caused a notice of intention to sue to be issued by his Lawyers to the Applicant which was duly served its Lawyers on 20<sup>th</sup> of April, 2021.

They argued that issuance of a Notice of Intention to sue prior to instituting Court proceedings is a legal requirement. **See: Reg. 39 of the Advocates (Remuneration and Taxation of Costs) Rules S.I 267-4 (as amended)**

That without Prejudice to the foregoing submission, they hasten to bring to the Court's attention the fact that, it is around this period that the COVID-19 pandemic was wreaking havoc on the Country and with the lockdown which ensued almost everything had ground to a halt; and only recently has the situation gradually improved; and prayed that the Court takes judicial notice of this fact and its associated rigors under **Sections 55 and 56 of the Evidence Act, Cap. 6.**

They further submitted that the foregoing matters raise serious triable issues worth investigating in a full blown ordinary trial. That the principles of justice and equity warrant this Honourable Court to exercise its powers under **Section 33 of the Judicature Act** and its inherent jurisdiction under **Section 98 of the Civil Procedure Act Cap. 71** to allow the 1<sup>st</sup> Respondent a limited time to file his Suit against the Applicants and its predecessors in title while maintaining the Caveat in the meantime.

That in this regard, although not binding on this Honourable Court, prayed that the Court finds instructive and be pleased to follow the decision of ***Amber Venture Ltd vs Sembatya Abubakali & Anor HMC No. 0164/2019*** where in an Application similar to the instant one, Court took judicial notice of the negative effects associated with the Covid-19 pandemic and allowed a caveator a period of two months to institute his Suit while maintaining the Caveat.

That although in the Affidavit in Support of the Application, it is averred, without any evidence, that the Applicant has suffered loss as a result of the Caveat, in the same Affidavit admission is made that the Applicant is in possession of the suit land and that it even operates a school on the Land. **See: Paragraphs 11, 12 and 13 of the Affidavit in Support of the Application.**

That it is inconceivable how this can qualify as loss when juxtaposed with the 1<sup>st</sup> Respondent who has been dispossessed of his land for years. That this glaring contradiction in the Affidavit in Support only points to malafides on the Applicant's part which ought to be construed in the 1<sup>st</sup> Respondent's favour; and in light of the foregoing authorities and submissions, the 1<sup>st</sup> Respondent has demonstrated that he has sufficient grounds to maintain the caveat, he has already set in motion the process of instituting an ordinary action against the Applicant and the balance of convenience lies in maintaining the caveat rather than removing it.

In addition, that the 1<sup>st</sup> Respondent has demonstrated sufficient reasonable cause that his Caveat should not be removed so as to enable him to file an ordinary suit in this Honourable Court challenging the Applicant's purported interest in the suit land.

**In resolving this issue**, I have critically analyzed the provisions of **Section 139 (1) of the Registration of Titles Act (supra)**, and the other related laws as cited earlier in this Ruling. The case of ***Rutungu Properties Limited vs. Linda Harriet Carrington & Another (supra)*** relied upon by learned counsel for the Applicant elaborates on the purpose of putting caveats on land.

Further, the case ***of Teo Ai Choo vs. Leong Sze Hian [supra]*** which allowed the removal of a caveat because of a delay of eleven (11) months during which period no action had been filed and other authorities relied upon by the Applicant in their written submissions are relevant to guide this court on what amounts to delay. The Court in that case emphasized that delay was the sole reason for the removal of the caveat in that case.

I have also relied on the provisions of **Section 22 (1) of the Registration of Title's Act Cap 230** as cited by learned counsel on expiration of a caveat to one month from the receipt of a caveat that such a caveat shall be deemed to have lapsed, unless the person by whom or on whose behalf it was lodged within that time has taken proceedings in a court of competent jurisdiction to establish his or her title to the estate or interest specified in the caveat, and has given written notice of the proceedings to the Registrar, or has obtained and served on the register an injunction or order of the High Court.

Relating the above to this case, it is clear that although the 1<sup>st</sup> Respondent avers that he had filed a suit as is envisaged in the ***Rutungu Properties Limited vs. Linda Harriet Carrington & Another (supra)***, it is clear that

this suit has never been served upon the Applicants in this matter or any of the other six (6) Defendants the 1<sup>st</sup> Respondent was suing, but it has been lying on the court file unserved up to now, four years later.

The suit which the 1<sup>st</sup> Respondent is referring to was filed way back on 16<sup>th</sup> November 2022, and it is clear that by that time, all measures caused by the Covid 19 pandemic had been relaxed and Courts in particular were operating normally. This means that much as the 1<sup>st</sup> Respondent is trying to convince Court that this affected his serving the Summons in that suit upon the Defendants, this is clearly not true. It is also clear that to date, the 1<sup>st</sup> Respondent has not taken any steps to apply for fresh Summons in respect of that suit but abandoned it in Court where it is still lying.

This clearly leads me to believe that although the 1<sup>st</sup> Respondent filed a case in this Honourable Court, it is clear he has no intention of pursuing it since he failed and or refused to serve it to the Defendants who include the Applicant in this case among others. This makes the acts of the 1<sup>st</sup> Respondent more of persecution of the holder of the Certificate of Title for a period of about 04 years as of now while the 1<sup>st</sup> Respondent is hiding behind the said lodged a caveat on the suit land to frustrate the Applicant in this case.

Further, under **Section 140(1) of the Registration of Titles Act, Cap 230**, this court is empowered in Applications of this nature to make orders as it deems fit. This includes the power to order for removal of a caveat where the caveator fails to show cause why it ought not to be removed.

I have also taken into account the provisions of **Section 140(1) of the RTA, Cap 230 (supra) and Section 139(1) of the Registration of Titles Act, Cap 230** which provides:-

***“Caveat may be lodged and withdrawn***

*(1)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 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”.*

From the foregoing, it is trite law under **Section 139 (1) of the RTA, Cap 230 (Supra)** that for a caveat to be valid, the caveator must have a caveatable interest, legal or equitable in the land. A caveat once lodged whether reasonably or unreasonably ceases to have effect if withdrawn by the caveator, lapses after the statutory notice or removed by court order. I have relied on the case of **Boyes v Gathure [1969] E.A 385**, where it was held that:-

*“...a caveat is intended to serve a twofold purpose, on one hand, it is intended to give the caveator temporary protection, and on the other, it is intended to give notice of the nature of the claim to the person whose estate in the land is affected and to the world at large”.*

In addition, **Section 140(2) of the RTA** goes ahead to state that caveats that are not beneficiary caveats shall lapse upon expiry of 60 days after Notice has been given that the proprietor has applied for removal of the caveat.

The evidence in this Application reveals that none of the parties gave full details of the caveat lodged on the suit land by 1<sup>st</sup> Respondent (hereinafter called the caveator) and it is assumed by this court that it is one that could have been lodged under **S.139 RTA**.

Again relying on **Boyes v Gathure (supra)**, the learned justices were clear that caveats should exist in perpetuity. The affidavit evidence and **Annexure ‘A’** to the Affidavit in Reply by the 1<sup>st</sup> Respondent confirms this court that the caveat on the suit land was lodged on the land on the land on the 21<sup>st</sup> of June, 2019. It is over four (04) years since it was lodged, yet as already stated in this Ruling, a perusal of **Civil Suit No. 88 of 2022** which the 1<sup>st</sup> Respondent had filed against seven (7) defendants including the Applicant in this case who appears as the 1<sup>st</sup> Defendant and in which he alleged illegal transfer of the Certificate of Title in respect of the suit land, reveals that since he filed the said suit, he has never effectively served the same upon any of the defendants in that case. The record also shows that he merely filed a Plaint, sat back and never served the main suit but went ahead and also filed some Applications which he also never bothered to effectively serve upon any of the Respondents therein. **[I shall return to the effect of that suit and its Applications later].**

In addition, **Section 59 of the Registration of Titles Act** states 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 of the entry of the Certificate in the Register Book, and shall be conclusive evidence that the person name 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.”*

The above is trite law and has been upheld in numerous decided cases have considered and applied the above provisions. In the case of **John Katarikawe vs Katwiremu & another [1977] HCB 187**, it was held inter alia that provisions of **Section 61 (now 59) of the Registration of titles Act, Cap 230** are clear that once a person is registered as proprietor of land, his title's indefeasible except for fraud.

A similar position was taken in the case of **Olinda De souza vs Kasamali Manji [1962] E.A 756** where it was held that in absence of fraud, possession of a Certificate of title by a registered proprietor is conclusive evidence of ownership of the land and the registered proprietor has indefeasible title against the whole world.

Further, **Section 176 (c) of the Registration of Titles Act, Cap 230** which despite protecting a registered proprietor of land against ejectment except on ground of fraud, provides as follows:

*“No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor under this Act, except in any of the following cases-*

*(c) the case of a person deprived of any land by fraud as against the person registered as proprietor of that land through fraud or as against a person deriving otherwise than as a transferee bonafide for value from or through a person so registered through fraud.....” [Emphasis Mine].*

Relating the above to this case, although it is clear that the 1<sup>st</sup> Respondent is alleging fraud in his Affidavit in Reply, it is clear as already noted earlier in this Ruling that he has not taken any steps to serve and or prosecute his suit and seems uninterested in doing so up to now. The Certificate of Title which the 1<sup>st</sup> Respondent caveated has changed hands three times since he was first registered on it and as such, court cannot draw any conclusions of any wrong doing on the part of the current holder of the Certificate of Title.

In this case, since as of now there is no concrete proof of any wrongdoing or fraud proved against the Applicant in this case as far as its acquisition of the said Certificate of Title, and

I'm also alive to the position that the ***Doctrine of lis pendens*** doesn't not apply in Uganda meaning that there is no law which governs its operation as was held in the case of ***J. W.R Kazoora vs Rukuba, Supreme Court Civil Appeal No. 13 of 1992***; this means that in our laws, pendency of a suit doesn't affect transactions in the land office and a party desirous of protecting their interest has to do so by lodging a caveat or obtaining an injunction against the opposite party.

Be that as is, the lodging of a caveat is not a license for a party to file cases in Court without any intentions of serving or prosecuting them, because allowing such a situation to prevail has the negative effect that the person who holds the title is perpetually put at ransom.

It is therefore my finding that it is not only unjust but unequitable and would work to the detriment of the Applicant who already holds the Certificate of Title, has established itself on the suit land and is in full occupation of the same and is already putting it to use.

Secondly, the balance of convenience lies in his favour of removing the caveat and I find no other compelling reasons and or intervening circumstances that would bar this court from vacating the caveat which is the subject of this Application.

The first issue is therefore resolved in the affirmative.

## **Issue 2: What remedies are available to the parties?**

In respect of this issue, It was submitted by learned counsel for the Applicant that since the 1<sup>st</sup> Respondent has no sufficient grounds whatsoever to have the caveat maintained, has not brought an ordinary action timelessly against the caveatee and the balance of convenience lies in favour of removing the caveat than in maintaining it, they accordingly prayed that for an order directing the 2<sup>nd</sup> Respondent to remove the caveat lodged by the 1<sup>st</sup> Respondent on land comprised in Kagoma, Jinja FRV 1136, Folio 10, Block 4, Plot 217 situate at Kabowa.

They also prayed for compensation for the loss occasioned to the Applicant by the 1<sup>st</sup> Respondent's caveat as elaborated under Paragraph 24 herein; and relied on **Section 142 of the Registration of Titles Act, Cap 230** which gives this Honourable Court powers to order compensation against any

person who lodges and maintains a caveat on another's land without justifiable cause.

They cited the case of **Bank of Uganda vs. Fred Masaba & 5 Others SCCA 03/98, the Supreme Court** held that "*The fundamental principle by which courts are guided in awarding damages is restitution integrum.*" Court further noted that it has been established that "*to be eligible for general damages, the party should have suffered loss or inconvenience to justify the award of damage*".

That it is trite law that "*damages are determined according to the assessment of a reasonable man and do not represent a person's financial or material asset*"; and referred to **Haji Asuman Mutekanga vs. Equator Growers (U) Ltd (Supra)**. They prayed that the Applicant be awarded general damages/compensation of Ug. Shs. 40,000,000/= (Forty Million Uganda Shillings) as general damages for the damage/inconvenience suffered due to the 1<sup>st</sup> Respondent's caveat for 40 months. In the final result, they prayed that;-

a) An order doth issue directing the 2<sup>nd</sup> Respondent to remove the caveat lodged by the 1<sup>st</sup> Respondent on land comprised in Kagoma, Jinja FRV 1136, Folio 10, Block 4, Plot 217 situate at Kabowa.

b) An Order doth issue directing the 1<sup>st</sup> Respondent to pay compensation of Ug. Shs. 40,000,000/= to the Applicant for the loss and damage occasioned by the said caveat and for lodging the aforesaid caveat without lawful or reasonable cause.

c) The 1<sup>st</sup> Respondent pays the costs of this Application.

**In Reply**, it was submitted for the 1<sup>st</sup> Respondent that the he having demonstrated that he had reasonable interest to lodge a caveat on the suit land and that the balance of convenience lies in his favour to maintain the caveat, the Applicant is not entitled to any compensation. That the Applicant has laid no real evidence before Court to prove the general allegations of loss; and prayed the Court finds that these allegations are disallowed for being unsubstantiated.

Further, that Court's powers to grant general damages are discretionary and this discretion is exercised judiciously. That counsel for the Applicant's claim for Ugx. 40,000,000/= as general damages, in the Applicant's written submissions is unfounded and baseless and under **S. 98 of the Civil Procedure Act Cap. 71 and S. 33 of the Judicature Act Cap. 13**, this



Honourable Court is vested with the jurisdiction and powers to grant any order to meet the ends of Justice. They prayed that this Honourable Court allows the 1<sup>st</sup> Respondent's caveat to be maintained so as to protect his interest in the suit land pending institution of an ordinary suit against the Applicant and its predecessors in title. They also prayed that the 1<sup>st</sup> Respondent be allowed limited period of two (2) months to institute his suit in this Honourable Court; and that the Application be dismissed with Costs to the 1<sup>st</sup> Respondent.

I have carefully analyzed this issue. In arriving at the appropriate remedies, I have relied on **Section 142 of the Registration of Title's Act Cap 230** provides that;-

*"Any person lodging any caveat with the registrar, either against brining 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."*

In view of my findings and decision in the 1<sup>st</sup> issue, I have already pronounced myself that the ends of justice in this case demands that the caveat lodged by the 1<sup>st</sup> Respondent. The period of delay of 04 years in this case is unnecessarily long to maintain a caveat and the 1<sup>st</sup> Respondent cannot hide behind his filing a case which he never served or prosecute to continue persecuting the Applicant who is the holder of the Certificate of Title in question.

For all the reasons given in this Ruling, the Caveat lodged by the 1<sup>st</sup> Respondent is hereby vacated. This shall take effect from the date of reading this Ruling.

Further, I am inclined to agree with learned counsel for the Applicant's arguments that the 1<sup>st</sup> Respondent's caveat has caused tremendous loss and damage to the Applicant; and that this has to be compensated for in damages. The Applicant prayer for general damages of UGX 40 Million, but I find this on the higher side. I however agree with them that in view of the time frame the 1<sup>st</sup> Respondent has kept this caveat on the Applicants title and to date still has no intentions of vacating it, the Applicant is entitled to general damages.

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 satisfactorily demonstrated that they suffered great inconvenience at the instance of the 1<sup>st</sup> Respondent maintaining a Caveat on their Certificate of Title. I therefore agree with learned counsel for the Applicant and find that they are entitled to general damages. A modest amount of Shs. 20 (Twenty) Million Only has been found sufficient in this case.

On the other hand, **section 27 (2) of the CPA** makes provision for interest on claims for monetary payment. I also award them interest on the general damages from the time of reading this Ruling until full payment. A just and reasonable interest rate, in my view, is one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. In that regard I would consider it at court rate to be just and fair. It shall be applicable to the general damages only.

Further, 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, the Applicant has succeeded in their claim, and I find no compelling and or justifiable reason to deny them costs of this Application. I therefore award them full costs in this Application.

This Application is allowed with the following orders:-

- a) The Applicant has succeeded in this Application and the 1<sup>st</sup> Respondent has failed to show cause why his caveat vide Instrument Number JJA - 00018611 lodged on the Applicant's land comprised in Kagoma, Jinja FRV 1136, Folio 10, Block 4. Plot 217 situate at Kabowa should not be removed from the Register.
- b) It is therefore ordered that the 2<sup>nd</sup> Respondent removes the Caveat lodged by the 1<sup>st</sup> Respondent on land comprised in Kagoma, Jinja FRV 1136, Folio 10, Block 4, Plot 217 situate at Kabowa after the delivery of this Ruling.
- c) The 1<sup>st</sup> Respondent pays general damages to the Applicant for the loss and damage occasioned by the existence of the said Caveat and for lodging the aforesaid Caveat without lawful or reasonable cause to the tune of UGX 20 (Twenty) Million Only.
- d) An order that the 1 Respondent pays interest from the time of reading this Ruling to payment in full.
- e) The 2<sup>nd</sup> Respondent the Commissioner Land Registration is hereby to rectify the Register by removing or vacating the Caveat lodged by the 1<sup>st</sup> Respondent on 21<sup>st</sup> June, 2019 on land comprised in Kagoma, Jinja FRV 1136, Folio 10 Block 4, Plot 217 situate at Kabowa from the date of delivering this Ruling.
- f) The 1<sup>st</sup> Respondent is directed to pay full costs of this Application to the Applicant.

I SO ORDER

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**JUSTICE DR. WINIFRED N NABISINDE**  
**JUDGE**  
**18/04/2024**

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 seek leave of appeal against this Ruling to the Court of Appeal of Uganda.

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**JUSTICE DR. WINIFRED N NABISINDE  
JUDGE  
18/04/2024**