

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)**

**MISC APPLICATION NO. 0064 OF 2016**

- 1. NANTONGO HARRIET**
- 2. NAGAWA ANNET:.....:APPLICANTS**
- 3. NAKABUGO MIRIA**

**VERSUS**

**NAMUYIGA ROSE :.....:RESPONDENT**

**Before: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

The Application was brought under Section 177 of the Registration of Title Act and Section 98 of the Civil Procedure Act, Cap 71 and O.52 r1 and 24 of the Civil Procedure Rules.

The application is for an order for cancellation of the Plaintiff's/Respondent's names on the Certificate of Title and costs of the application.

The application is supported by the affidavit of Ntongo Harriet.

The Respondents opposed the application through Namuyiga Rose's affidavit. Both parties filed submissions.

The brief facts are that the Applicant was a successful party in Civil Suit No. 032 of 2014 where the Magistrates Court advised for cancellation of the title in favour of the Applicant under Section 177 of the RATA.

In the Applicant's submission, Counsel referred to decided cases to argue that under Section 177 of the Registration of Title Act the only necessary ingredients to prove were;-

1. *That there was recovery of land, estate or interests from the registered proprietor thereof.*
2. *The proceeding leading to such recovery of land is expressly not barred.*

He referred to; **Darlington Kampala versus Registrar of Titles, Misc Cause No. 12/2013,**  
Re: **Ivan Mutaka 1981 HCB 28;** Counsel argued that  
the Applicant has satisfied the conditions necessary for the application to be granted.

For the Respondents, it was argued that the application be denied as the matter is pending on appeal. The Applicant challenged the fact of this appeal asserting that it was filed outside the time allowed for the filing of such appeals.

I have gone through all the pleadings and submissions. Section 117 of the Registration of Title Act is self regulating. It clearly provides that once there is proof that;-

1. *There was recovery of land, estate or interest from the registered proprietor.*
2. *The proceedings leading to such recovery of land is not barred.*

No contention is on record regarding the fact that Court heard Civil Suit No. 32/2014 at Wakiso Chief Magistrates Court in favour of the Applicants and advised them to invoke Section 117 of the Registration of Title Act through the High Court for consequential orders of cancellation of the title in issue.

The Respondents however, under Paragraphs 11,12 and 13 of the affidavit in reply by Namuyiga Rose avers that she has lodged an appeal in High Court Land Division and annexed a Memorandum of Appeal dated 29<sup>th</sup> June 2016. The Respondent's Counsel then addressed Court on the need to avail a remedy to the Respondent to enable her intended appeal not to be rendered nugatory.

I agree with the arguments by Counsel for the Applicants that Section 177 of the Registration of Title Act does not envisage any proof of anything else save the two ingredients stated above. There is no indication that the fact of an appeal can be a bar to any proceedings under the said section. However, the wording of the section uses the word '*the High Court may direct the Commissioner to cancel the Certificate of Title.....*'.

It is trite law that the use of the word '*may*' always imputes a grant of discretion as opposed to the use of '*shall*' which imputes a mandatory requirement. This means that Court has to carefully consider the matter and draw from the common law usage of discretion so that it aids the parties to ensure that the ends of justice are met by the decision it finally takes.

This Court is aware that matters of land are highly contentious and need care and good sense of Judgment before meting out sanctions arising from alleged breaches. This brings to remembrance the spirit of Article 126 (2)(e) of our Constitution which provides for substantive justice to be applied as against technicalities.

In the circumstances of this case where a party is desirous of appealing the decision of the lower Court and has taken the necessary steps so to do, then substantive justice ought to offer for her a stop gap solution, so that the appeal is not rendered nugatory. This was the spirit of the decision in Re; *Christine Namatovu Tebajjukira (1992) HCB 85* that;

*'the administration of justice requires that the substance of disputes be investigated and decided on their merit and that errors and lapses should not necessarily debar a litigant from the pursuit of his rights'.*

The above holding would apply to wash away the objections raised by counsel for the Applicant that the appeal was filed out of time, a fact denied by Respondent's Counsel.

I will hold that since the Respondent has exercised the right of appeal and has shown evidence of the Memorandum of Appeal, the technicalities involved as to the time frames will be left to the attention of the appellate Court, but this Court will take Judicial notice of the intended appeal and hence find it a good reason to withhold from exercising the provisions of Section 177 of the Registration of Title Act, thereby refusing to grant the consequential order of cancellation of title. I am not persuaded by the arguments calling for the strict application of Section 177 of the Registration of Title Act (inspite of the appeal) as argued by the Applicants. I agree with the Respondents that the Respondent should be allowed to pursue the appeal and then depending on the findings on appeal, the parties rights will be sorted out.

For the aforesaid reasons therefore, I decline to grant the order. The Application is rejected with each party ordered to pay their own costs.

I so order.

.....  
Henry I. Kawesa

**JUDGE**

06/11/2017

06/11/2017:

Mr. Byekwaso for Applicant.

Ms. Ann Nalumenya for the Respondent.

Parties present.

Clerk: Irene Nalunkuuma.

Court: ruling delivered in chambers.

.....  
Emukol Samuel

**Deputy Registrar**

06/11/2017