

1    **THE REPUBLIC OF UGANDA**  
2    **IN THE HIGH COURT OF UGANDA AT MUKONO**  
3    **MISC. APPLICATION NO. 04 OF 2018**  
4    **FORMALLY MA 3/2016**  
5    **(Exparte)**  
6    **KAVULU ELLY :::APPLICANT**  
7  
8    **BEFORE: HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH**  
9    **COURT**

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**RULING**

1. Kavulu Elly, the applicant herein brought this application by way of Notice of Motion exparte under section 167 of the RTA, section 33 of the Judicature Act, section 98 of the CPA order 52 rules 1 and 2 of the civil procedure rules seeking for orders that;
  - i) Land comprised in Kyagwe Block 147 Plot 65 at Kalagi be vested in the applicant and registration be done in the names of Kavulu Elly.
  - ii) The Registrar of Titles be directed to effect changes in the Register and owner’s copy.
  - iii) The Applicant meets costs of the Application.
  
2. The Application is supported by the affidavits of **KAVULU ELLY (the Applicant)** dated 4<sup>th</sup> August 2015 and Matiya Katongole s/o Nakitali Edward and briefly, the grounds are as follows:
  - a) That the Applicant bought land comprised in Kyagwe Block 147 Plot 65 at Kalagi measuring 1 acre from Nakitali Edward.
  - b) That the late Nakitali Edward received the said land from UETCL as compensation before his demise.
  - c) That the Applicant took over physical possession of the land before the death of the said Nakitali.

30 d) That the late Nakitali's family has no claim whatsoever on the suit land as  
31 their late father had informed them of his transaction with the Applicant  
32 before his demise.

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34 3. **Submissions**

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36 Counsel Dan Byaruhanga of M/S Tumwesigye Baingana and Co. Advocates who  
37 appeared for the applicant filed written submissions that have been put into  
38 consideration while writing this Ruling.

39

40 4. **Issue**

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42 *The only issue for courts consideration is whether section 167 of the RTA is*  
43 *applicable to the applicant's case.*

44

45 5. **Resolution**

46 In his submissions, learned Counsel for the Applicant, reiterated the grounds for the  
47 Application as laid out in the affidavits of Kavulu Elly and Matiya Katongole.

48

49 He added that the late Nakitali had even introduced the Applicant to the local  
50 authorities as the owner but unfortunately he died and at the time of death, he had not  
51 received his title from UETCL.

52

53 To prove purchase and ownership of the suit land, he attached the Land Sale  
54 Agreement executed between the Applicant and the late Nakitali on 14<sup>th</sup> October 2010  
55 and a recommendation letter from the area LC introducing the applicant as the owner  
56 of Block 147 Plot 65 Kyagwe as annexures "A" and "B" to his affidavit  
57 respectively.

58

59 He further noted that the 2<sup>nd</sup> deponent Matiya Katongole who is also the heir of the  
60 late Nakitali stated in his affidavit that his father had died in 2003 but he was always

61 aware that before his death, he had sold part of the land he had received as  
62 compensation from UETCL to Elly Kavulu who was and still is in actual possession  
63 thereof. He also emphasized that his family had no claim whatsoever on the said land.

64

65 Counsel relied on **section 167 of the RTA** which is to the effect that;

66 ***“If it is proved to the satisfaction of the Registrar that land under this Act has been***  
67 ***sold by the proprietor and the whole of the purchase money paid, and that the***  
68 ***purchaser has or those claiming under the purchaser have entered and taken***  
69 ***possession under the purchase and that entry and possession has acquiesced in by***  
70 ***the vendor or his or her representative, but that transfer has never been executed by***  
71 ***the vendor and cannot be executed by the reason that the vendor is dead or is***  
72 ***residing out of the jurisdiction or cannot be found, the Registrar may make a***  
73 ***vesting order in the premises...”***

74

75 He further invoked the unlimited powers of this court vide section 98 of the CPA and  
76 section 33 of the Judicature Act which when read together with section 167 of the  
77 RTA clothe this court with the mandate and powers to make orders in accordance  
78 with the law and facts of the case.

79

80 The powers under the above sections are discretionary but such discretion must be  
81 judiciously exercised based on the law and facts.

82

83 ***The duty of any Judge is to apply the law to a given set of facts and come out with a***  
84 ***decision that is fair and just to the parties or any other person who would be***  
85 ***affected by any orders arising therefrom.***

86

87 The Application was made exparte with no respondent yet the orders sought were to be  
88 directed to the Registrar of Titles who under section 182 of the RTA has the statutory  
89 duty to:

90 (a) Bring land under the Operation of the Act.

91 (b) Have any dealings on the land registered or recorded.

92 (c) Have any certificate or document issued.

93 (d) Have any act or duty in respect of titles done or performed.

94

95 For clarity let me reproduce the entire section.

96 Under section 182 of the RTA it is provided:

97

98 ***(1) “that if upon the application of any owner or proprietor to have land brought***  
99 ***under the operation of this ACT, or to have any dealings registered or recorded or***  
100 ***to have any Certificate of Title or other document issued or to have any act or***  
101 ***duty done or performed which by this ACT is required to be done or performed by***  
102 ***the Registrar, the owner or proprietor of land may summon the Registrar who***  
103 ***refuses so to do or if the owner or proprietor is dissatisfied with any decision of***  
104 ***the Registrar upon his or her Application, the owner or proprietor may require the***  
105 ***Registrar to set forth in writing under his or her hand the grounds of his or her***  
106 ***refusal or decision and the owner or proprietor may, if he or she thinks fit, at his***  
107 ***or her own cost summon the Registrar to appear before the High Court to***  
108 ***substantiate or uphold those grounds.***

109

110 ***(2) The summons under subsection (1) shall be served upon the Registrar six clear***  
111 ***days at least before the day appointed for hearing the complaint of the owner or***  
112 ***proprietor.***

113

114 ***(3) Upon such hearing the Registrar shall have the right of reply and the***  
115 ***High Court may, if any question of fact is involved direct an issue to be tried to***  
116 ***decide the fact, and thereafter the High Court shall make such order in the***  
117 ***premises as the circumstances of the case require and such order as to payment of***  
118 ***cost and fees as to it shall seem fit and the Registrar shall obey that order”.***

119

120 The case under consideration falls on all fours under the above provision where the  
121 Registrar of Titles can be summoned to court at the instance of the owner of land or  
122 registered proprietor, to respond to issues pertaining to his statutory duties.

123

124 This implies that the Registrar of Titles can be sued or summoned to court in respect of  
125 his or her statutory duties as a defendant or Respondent in an application like this one  
126 under review unless their action is protected under section 175 of the RTA.

127

128 However, for unknown reasons, the Applicant and his Counsel did not deem it necessary  
129 to sue The Registrar of Titles as the Respondent in spite of seeking for orders which fall  
130 under the ambit of the Registrar's statutory duties and or functions under the RTA.

131

132 The court however proceeded with the case as it is any way.

133

134 For one to be entered in the register as proprietor under section 167 of the RTA, the  
135 following conditions must be met;

- 136 i) The land must be registered under the RTA.
- 137 ii) The Registered Proprietor must have sold the land in question and received  
138 the whole purchase price.
- 139 iii) The Purchaser or those claiming under him or her must have taken possession  
140 of the purchased land.
- 141 iv) The said entry and possession must have been acquiesced in or consented to  
142 by the vendor or his representative.
- 143 v) The transfer of the property has not been executed because the vendor is dead  
144 or is residing out of jurisdiction or cannot be found.

145

146 The above essential elements of section 167 of the Registration of Titles Act must be  
147 proved or established before the Registrar and Registrar here refers to the Registrar of  
148 Titles.

149

150 The request to have the land registered into the names of the vendor should be made  
151 to the Registrar of Titles who upon satisfaction makes the necessary vesting order  
152 which leads to the making of the necessary transfer.

153 In Uganda land the land tenure system or ownership is in four types to wit customary,  
154 mailo, freehold, and leasehold.

155

156 From the affidavit evidence on record the land that the applicant desires to have  
157 transferred into his names is under the Torrens System as it has a Block and Plot  
158 numbers as it is stated to be registered as Kyagwe Block 147 Plot 65 at Kalagi in the  
159 names of Nakitali Edward.

160

161 Unfortunately, no evidence was adduced from the land registry showing that it was  
162 registered in the names of Nakitali Edward at any one time.

163

164 The information contained in paragraph 3 of the affidavit of Matiya Katongole a son  
165 to Nakitali Edward the vendor to the effect that it was part of the land that was  
166 compensation to Nakitali Edward from UECTL has no evidential value as there is no  
167 documentary evidence between his Father and UETLC to that effect. It can as well  
168 be treated as hearsay evidence which is not admissible.

169

170 No certified copy of the certificate was tendered in court or attached to the pleadings.

171

172 Matiya Katongole who claimed to be son and heir did not say anything about the title  
173 and where it is.

174

175 Kivulu Elly the applicant, in his affidavit evidence under paragraph 3 and 6 stated  
176 that he bought the said land from Edward Nakitali after he had acquired it from  
177 UETLC as compensation, and that at the time of his death; he had not received the  
178 land title from UETLC which was processing them.

179

180 According to Matiya Katongole son and heir to Nakitali Edward, his father died in  
181 2003.

182 The Sale Agreement the Applicant is relying on is surprisingly dated 14<sup>th</sup> October  
183 2010; and also bears last date of payment as 8<sup>th</sup> January 2013.

184

185 The basis for this Application is death of the alleged vendor/ proprietor.

186 However there is no evidence of death of Nakitali Edward by way of death certificate  
187 and no evidence that his family has tried to procure Letters of Administration and  
188 pursued the recovery of the Certificate of Title from UETLC in vain.

189

190 It is trite law that the burden of proof rests on he who alleges and in Civil cases, the  
191 burden is very light. It is on the balance of probabilities.

192

193 In this Application, the Applicant had the burden to prove that:

194

- 195 1. The land in question is registered in the names of Nakitali Edward
- 196 2. That Nakitali Edward is dead.
- 197 3. That the Registrar of Titles has refused to register the Applicant's  
198 Interest in spite of satisfying the ingredients under section 167 of the RTA.

199

200 He ought to have produced records from the Registrar of Titles showing that Nakitali  
201 Edward was the registered proprietor of land measuring one acre comprised in Block  
202 147 Plot 65 and that he acquired it as compensation from UETLC.

203

204 Perusal of the translated sale of land Agreement dated 14<sup>th</sup> October 2010 describes  
205 this land as land found in Kalagi on Block 147 measuring one acre. The Agreement  
206 does not mention the Plot number and the Registered Proprietor. It does not mention  
207 anywhere that the vendor, Nakitali Edward acquired it as compensation from UETLC  
208 and that they are processing the Certificate of Title.

209

210 The Agreement does not mention anything about the Certificate of Title being  
211 processed.

212

213 ***It is very essential to establish proprietorship before the Applicant can secure***  
214 ***registration under section 167 of the RTA because the seller or vendor must be the***  
215 ***registered proprietor of the land.***

216

217 It is not enough to have a Sale Agreement. The vendor must have the capacity to sell  
218 and transferable legal interest.

219

220 The Registrar of Titles uses the record in his register to ascertain proprietary rights  
221 and must be satisfied that the vendor indeed sold his legal interest in the land. Section  
222 38(1) of the RTA provides for duplicate Certificate of Title. The particulars of a  
223 certificate of title can always be procured from the office. Section 59 of the RTA is to  
224 the effect that Certificate of Title is evidence of ownership.

225

226 Apart from the Applicant alleging he purchased land in Block 147 Plot 65 at Kalagi,  
227 he has no evidence to show that the land is registered in the names of the vendor  
228 Edward Nakitali. He has no evidence showing how Nakitali acquired the said land  
229 and the legal authority to sell it to him.

230

231 The Applicant did not take out summons to serve the Registrar he wants to be  
232 directed by this court to register land in his names as is required under section 182 of  
233 the RTA.

234

235 Court was not informed whether the Applicant has ever presented his case before the  
236 registrar and failed to secure his registration or not.

237

238 I do agree with the provisions of section 33 of the Judicature Act that confers power  
239 and authority to the High Court to, in the exercise of the jurisdiction vested in it by  
240 the Constitution, the Judicature Act, or any other written law, to grant absolutely or  
241 on such terms and conditions as it thinks just, all such remedies as any of the parties  
242 to a cause or matter is entitled to in respect of any legal or equitable claim properly  
243 brought before it, so that so far as possible all matters in controversy between the



244 parties may be completely and finally determined and all multiplicities of legal  
245 proceedings concerning any matter be avoided.

246

247 However, I am afraid that in the instant case, if the prayers sought are granted and the  
248 Registrar of Titles is directed to effect changes in the register without evidence as to  
249 who is the registered proprietor and evidence of how the vendor Edward Nakitali  
250 acquired any authority to transact business on land comprised in Kyaggwe Block  
251 147 Plot 65 at Kalagi, the Court would be inviting multiplicity of civil suits from the  
252 Registrar of Titles and whoever might be the Registered Proprietor of Land  
253 comprised in Block 147, Plot 65 at Kalagi.

254

255 Section 33 of the Judicature Act applies to parties that have proven legal or equitable  
256 claims that are properly before court and not based on assumption.

257

258 In my view, this matter is not even properly before court because there is no evidence  
259 that the office of the Registrar of Titles was informed about any transaction between  
260 UETLC and Nakitali Edward and between Edward Nakitali and the Applicant AND  
261 that the officer deliberately refused to register the interest of the Applicant.

262

263 As mentioned earlier, the Applicant is free to cause the Registrar to show cause why  
264 he should not be compelled to register his interest in the land as provided under  
265 section 182 of the RTA. The Registrar of Titles should have been made a party to  
266 these proceedings if the Applicant believes he has a cause of action against him or  
267 her. The Registrar would have furnished court with relevant information about Block  
268 147 Block 65, land at Kalagi.

269 **Any order issued by Court for specific performance of a statutory duty must be**  
270 **backed by evidence that the officer has neglected or refused to perform his or**  
271 **her statutory duty.**

272 **Such an officer must also be given a fair hearing to show cause why he or she**  
273 **should not be compelled to perform his or her statutory duty.**

274

275 I am afraid that the court has no single iota of evidence that the Registrar of Titles has  
276 refused to perform the statutory duty of registering the applicant's interest in the land  
277 and that the vendor was actually the registered proprietor of the Land comprised in  
278 Block 147 Plot 65

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280 My finding is that mention of plot 65 and allegation of acquisition of the land by way  
281 of compensation from UETLC is not backed by any evidence and as such is of no  
282 evidential value.

283

284 Besides, the orders sought if granted would be against the principles of equity and,  
285 natural justice because the Registrar of Titles would be condemned un heard yet  
286 section 182 (2) of the RTA supra, provides for the procedure to be adopted in  
287 circumstances like in the instant case.

288 The Registrar should be summoned.

289

290 6. **Conclusion**

291

292 In view of the above, the court finds that the applicant failed to prove his case on the  
293 balance of probabilities and the facts of his case do not fall under the provisions of  
294 section 167 of the RTA.

295

296 Section 33 of the Judicature Act and 98 of the Civil Procedure Act must be applied  
297 judiciously in deserving cases.

298

299 Applying the above two sections in favour of the applicant would amount to abuse of  
300 the court process.

301 In the result the application is dismissed.

302

303 Dated at Mukono this **28<sup>th</sup>** day of **February 2019**.

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307 Hon. Lady Justice Margaret Mutonyi

308 **RESIDENT JUDGE**

309 **MUKONO HIGH COURT**

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