

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**(Geoffrey Kiryabwire, Monica Mugenyi, JJA & Remmy Kasule,  
Ag, JA)**

**CIVIL APPEAL NO. 301 OF 2017**

*(Arising, with leave of this Court in Civil Application No. 324  
of 2016, from High Court at Mbarara Civil Application No.  
HCT-05-CV-MA-126 of 2015, itself arising from High Court at  
Mbarara Civil Application No. HCT-05-CV-CR-0011-2013)*

**BARYAIJA JULIUS:.....APPELLANT**

**VERSUS**

**1. KARAMAGI BONIFACE AS  
ADMINISTRATOR OF THE  
ESTATE OF KIKWISIRE ZAVERIO**

**2. KABAREBE BURAZIO:.....RESPONDENTS**

**Judgment of Hon. Justice Remmy Kasule, Ag. JA**

**Introduction:**

This is a second appeal arising from the ruling of the High Court at Mbarara (David Matovu, J) wherein he confirmed the decision of the Kigoro Local Council 1 Court, Mbarara District.

## **Background:**

The facts as discerned from the Court Proceedings are as hereinafter.

The Late Mr. Yosamu Rwomuyaga, father of the Appellant, acquired by purchase land at Kigoro, Rubingo, Kashari, Mbarara District, in 1940. He occupied the same. There were some house structures thereon. For reasons that had nothing to do with this land, he was imprisoned thus leaving the land vacant. On being released from prison he found one Asanasio Babiheraki occupying and using the land. Rwomuyaga instituted **Civil Suit No. 54 of 1977**, in the 2<sup>nd</sup> Grade Magistrate's Court, Bwizibwera, against Asanasio Babiheraki. The same Court also served as a 3<sup>rd</sup> Grade Magistrate's Court, from time to time. Hence its being referred to as 3<sup>rd</sup> Grade or 2<sup>nd</sup> Grade Magistrate's Court in the Court proceedings of the Courts below. In this Judgment this Court will be referred to as 2<sup>nd</sup> Grade Magistrate's Court, Bwizibwera, Rwanyamahembe, Rubingo Parish, Kashari County, Mbarara District.

The said case was heard and determined on 17<sup>th</sup> May, 1978 in favour of Yosamu Rwomuyaga. Asanasio Babiheraki admitted to Court that he occupied the suit land because he found it vacant. Rwomuyaga commenced execution proceedings and while the same were still being pursued and Asanasio Babiheraki was being forcefully evicted from the suit land, Rwomuyaga was gunned down to death by unknown people.

In September, 2000, the Appellant, son to the late Yosamu Rwomuyaga, and his mother, obtained from the High Court, Mbarara Letters of Administration to the estate of the late Yosamu Rwomuyaga. They then, as administrators, applied for execution of the Judgment in **Civil Suit No. 54 of 1977**. The execution was successfully carried out. Boundary marks were planted and the Appellant was put in possession of the suit land.

However, the Respondents later removed the boundary marks and began cultivating the suit land as their own. A criminal complaint was lodged to police by the Appellant against the Respondents. The Respondents were arrested, criminally prosecuted in the 2<sup>nd</sup> Grade Magistrate Court at Bwizibwera Criminal Case No. 201 of 2003, convicted of the offences of unlawfully removing boundary marks, threatening violence and wrongfully re-possessing land decreed by Court to belong to Yosamu Rwomuyaga, now succeeded to by the Appellant. Each one of the Respondents was sentenced to 6 months imprisonment. On appeal, their convictions were quashed and the sentences were set-aside.

The Appellant re-applied to Court for another execution warrant which was granted. The Appellant was once again put in possession and boundary marks were once again put back on the suit land.

Upon their release from jail, on appeal, the Respondents filed a case **No. 25 of 2007** over the same land against the Appellant in the Kigoro LC1 Court, Rubingo Parish, Bukiiro Sub-County, Kashari, Mbarara District. The LC1 Court ruled in that case in favour of the



Respondents declaring them to be the owners of the suit land. The Appellant complained to the Chief Magistrate of Mbarara, about the decision of the Kigoro LC1 Court, making a decision over the same land in a case the 2<sup>nd</sup> Grade Magistrate's Court, Bwizibwera, had already resolved upon in **Civil Suit No. 54 of 1977**.

The Mbarara Chief Magistrate in response to the complaint of the Appellant communicated to the LC1, Kigoro Cell, Rubingo, Kashari, Mbarara District, to the effect that the Judgment in **Civil Suit No. 54 of 1977**:

*"It is hereby cancelled and no longer valid. It is out dated and has lived its usefulness and Baryaija Julius should forth with stop using it".*

The Chief Magistrate did not elaborate as to why he so communicated.

The Appellant thereafter filed an application for Revision in High Court at Mbarara **Civil Application No. 0011-2013**, challenging the Chief Magistrate's communicated decision. The High Court at Mbarara (**David Matovu, J**) in a Ruling dated 27<sup>th</sup> November, 2011 held that:

***"The decision of the third Magistrate Court of 1977 in Bwizibwera could not be set aside by the letter of the Chief Magistrate Mbarara since there was no appeal that had been lodged against it"***.

However, the Judge, inspite of the above Ruling, confirmed the decision of the Kigoro LC1 Court in case No. 25 of 2007 and as such

ordered that those occupying the suit land were not to be evicted because they were not parties to the original **Civil Suit No. 54 of 1977**.

Thereafter, the Respondents filed in the High Court at Mbarara an **Application No. HCT-05-CV-126-2015** for the High Court of Mbarara to review its decision in the earlier **Application No. HCT-05-CV-0011-2013**, by removing from the Court's Ruling the holding that:

*"In the final analysis this application partly succeeds and the decision of Court in Civil Suit No. 54 of 1977 still stands and this Court hereby sets aside the letter of the Chief Magistrates Mbarara dated 9<sup>th</sup> December, 2009".*

The Judge (David Matovu, J.) declined to grant the said application but explained that the holding that the **"LC1 Court decision still stands"** was made in reference to people who were parties to the case before the LC1 Court so that they were not to be evicted from the suit land as they were never parties to **Civil Suit No. 54 of 1977**.

Being aggrieved by that decision, the Appellant lodged an Appeal, with leave having been granted, to this Court.

**Grounds of Appeal:**

***"1. The Learned trial Judge erred in law in reviewing a decision of the trial Grade III Magistrate in original Bwizibwera Court Civil suit No. 54 of 1977 due to the effluxion of time since such a review has caused hardship and total miscarriage of justice.  
2.. The Learned trial Judge gravely erred in law in gratuitously***

*awarding private property to trespassers who were not beneficiaries to the land that was judiciously held to belong to the late father of the Appellant to wit Yosamu Rwomuyaga who was the successful party in original Bwizibwera Grade III Court civil suit No. 54 of 1977.*

*3. The learned trial Judge erred in law in upholding a decision of the LC1 Court of Kigoro delivered on 10<sup>th</sup> September, 2007 when at the material time the said Court lacked judicial power to entertain a land dispute.*

*4. The learned trial Judge's ruling and order has occasioned a total miscarriage of justice".*

**Legal Representation:**

At the hearing of this appeal James Okuku and Justin Semuyaba, Advocates, represented the Appellant, while Boniface Ngaruye Ruhindi, Advocate, appeared for the Respondents.

By consent of both Counsel, the Notice of Appeal was validated by this Court and the withdraw of **Civil Reference No. 244 of 2017**, was also allowed.

Following the death of the first Respondent, Kikwisire Zaverio, Counsel for the Appellant conceded to **Civil Application No. 69 of 2021** whereby the administrator of the deceased's estate, with permission of the Court, became a party to this appeal.

**Submissions:**

Both Counsel for the Appellant and the Respondents proceeded by way of written submissions.

### **Submissions for the Appellant:**

Counsel for the Appellant submitted on ground 1 first, and then on grounds 3, and 2. He did not submit on ground 4.

### **Ground 1:**

Counsel relied on **Section 5 of the Limitation Act**, that provides that: *No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued*, and contended that the learned High Court Judge had acted contrary to that section when he reviewed the Judgment of the 2<sup>nd</sup> Magistrate Court, Bwizibwera delivered on 17<sup>th</sup> May, 1978 in **Civil Suit No. 54 of 1977**. Counsel also relied on a persuasive decision of the High Court of **Sarah Kintu vs Jjombwe Ssebadduka Fred; Civil Appeal No. 025 of 2011**, and submitted that, through the law of limitation, litigation should come to an end so as to enable the successful parties to enjoy the fruits of the Court Judgments delivered in their favour.

Counsel prayed for ground 1 to be allowed.

### **Ground 3:**

In paragraph 11 of the Ruling in **HCT-05-CV-CR-0011-2013**, Counsel referred to the Ruling of the learned Trial Judge that:

*“This application fails in as far as it relates to the Judgment of the LC1 Court of Kigoro delivered on 10<sup>th</sup> September, 2007, the same is left to stand, the people who are occupying the suit*

*land by virtue of the LC1 Court decision should continue doing so”.*

Counsel relied on ***Court of Appeal Civil Appeal No. 89 of 2011: Nalongo Burashe vs Kekitiibwa Magdalena*** and ***Rubaramira Ruranga vs Electoral Commission and Another: Constitutional Petition No. 21 of 2006***, where both this Court and the Constitutional Court ruled that, at the material time of 10<sup>th</sup> September, 2007 when the Kigoro LC1 Court, purported to adjudicate issues about the suit land Local Council Courts in Uganda had no jurisdiction to adjudicate on land issues as Courts of law.

Counsel therefore contended that there was no way a decision of the Kigoro LC1 Court would have been left to stand after the Courts including the Constitutional Court, had pronounced themselves on the legality of such Courts. The Learned High Court Judge thus erred in law to hold otherwise. Ground 3 therefore ought to be allowed.

**Ground 2:**

Appellant’s Counsel submitted that the Respondents are not beneficiaries to the estate of the late Yosamu Rwomuyaga. The Appellant had also never had any dealings with the Respondents in respect of the estate of his late father. The Trial Judge was thus in error for having considered the Respondents as aggrieved persons. Counsel prayed for Ground 2 to be allowed.

**Submissions for the Respondents:**

Counsel for the Respondents submitted on ground 1 first, and then on grounds 2, 3 and 4.



**Ground 1:**

Respondents' Counsel faulted the Appellant and his Counsel for having relied on the 2<sup>nd</sup> Grade Magistrate's Court, Bwizibwera Judgment and record of proceedings that are not certified, and contended that Court could not rely on the same, and ought to refrain from holding that the same were valid proceedings and Judgment of the Court.

Counsel argued that even if there had been a certified record of proceedings and a certified Judgment of the 2<sup>nd</sup> Grade Magistrate Court, Bwizibwera in **Civil Suit No. 54 of 1977**, the decision in that Judgment was not against the Respondents to this appeal. The parties to that suit were Yosamu Rwomuyaga as the Plaintiff and Asanasio Babiheraki as a Defendant. No evidence was led to show that the present Respondents in this appeal were successors in title to Asanasio Babiheraki or that they were beneficiaries to his estate so as to be bound by that decision in **Civil Suit No. 54 of 1977**.

Respondents' Counsel also contended that there was no affidavit evidence adduced in the lower Court to prove that the boundary marks on the suit land that had been put by the Court Bailiffs had been removed by the Respondents. Counsel for the Appellant just alleged this from the Bar which was contrary to the law.

Respondent's Counsel further submitted that the Respondents never litigated before the 2<sup>nd</sup> Grade Magistrate's Court Bwizibwera, in the alleged **Civil Suit No. 54 of 1977**. Having not been parties to the

said suit, there was no execution that could have been carried out against them, in that suit. Therefore the order sought from this Court to declare them as trespassers ought not to be granted.

Respondents' Counsel further argued that if the Appellant had any cause of action against the Respondents, then he, the Appellant, should have instituted a separate suit against the Respondents in a competent Court of law for that Court to determine the rights and liabilities of the parties as regards ownership of the land occupied by the Respondents since the land they, the Respondents, occupy had never been the subject of the dispute between the late Rwomuyaga and Asanasio Babiheraki. The late Babiheraki, during his life time, had never sued any of the Respondents in respect of that land.

Counsel referred Court to the persuasive High Court decision of ***Banyenzaki vs Godson and Another vs Baryaija Julius; High Court Civil Revision No. 07 of 2020***, where the Court (Tadeo Asiimwe, J.) released the Applicants who had been committed by the Magistrate to the civil prison for contempt of Court orders stating that they were not parties to the alleged suit.

Counsel thus submitted that this Court ought to have this appeal dismissed. The Appellant would be free to file a case against the Respondents in a competent Court, if he so wishes, to have the Respondents declared as trespassers on the suit land he claims to be his. The Appellant was acting wrongly to rely on the decision in **Civil Suit No. 54 of 1977** of Bwizibwera 2<sup>nd</sup> Grade Magistrate's Court, to which the Respondents were not parties, to have them summarily declared to be trespassers on the suit land without first having given

them an opportunity to be heard.

Learned Respondent's Counsel also asserted that the learned High Court Judge in **Miscellaneous Application No. 126 of 2015** did not at all revise the alleged decision in **Civil Suit No. 54 of 1977**, and neither did the Court set the same aside.

Counsel thus prayed that ground 1 be dismissed.

**Ground 2:**

As regards ground 2, Counsel for the Respondents submitted that the decision of the High Court in **Civil Application No. HCT-05-CV-CR-011 of 2013**, has never been appealed against. The appeal, the subject of this Ruling, is an appeal against the decision in **Civil Application No. HCT-05-CV-MA-126 of 2015** to review the decision in **HCT-05-CV-CR-011 of 2013**. He submitted that the decision in **HCT-05-CV-CR-011 of 2013**, stated that those who were not parties to the earlier decision in **Civil Suit No. 54 of 1977** should not be evicted from the land in issue. Therefore having not lodged any appeal challenging the said decision, the Appellant cannot now purport to challenge it in this appeal.

Respondents' Counsel thus prayed that ground 2 be disallowed.



### **Ground 3:**

Counsel for the Respondents contended that the argument advanced by Counsel for the Appellant that the learned trial Judge in his Ruling in **Civil Application No. HCT-05-CV-MA 126-2015** upheld the decision of the Kigoro LC1 Court, was erroneous. The pleadings filed by the parties and the certified copy of the proceedings before the Kigoro LC1 Court were never availed to the High Court. The alleged Judgment of the said Court, which was uncertified, showed that the case was about destruction of the property by the Appellant on the piece of land occupied by the Respondents.

The learned Judge thus rejected the arguments by learned Counsel for the Appellant that the Kigoro LC1 Court lacked Jurisdiction to determine the case and held that the said Court had jurisdiction to determine the issue of destruction of property, which it did. The said Court did not determine the dispute of ownership of the land in question as alleged by Counsel for the Appellant. The said LC1 Court did not remove any land from the Appellant to give to the Respondents. The Court only ordered the Appellant to stop destroying the Respondents' property. Having not litigated with the Respondents over the disputed land in the Magistrate's Court, the Appellant could not destroy the Respondents' properties under the guise that he had defeated them in the Magistrate's Court. Learned Counsel thus prayed that ground 3 be dismissed for lack of merit.

#### **Ground 4:**

In respect to ground 4, Counsel for Respondents, submitted that the ground was too general and too vague thus offending **Rule 86(1) of the Rules of this Court**. Counsel prayed for this ground to be struck out as being wrong in law.

All the grounds of the appeal being without merit, Counsel prayed for this appeal to be dismissed with costs and those in the Courts below.

#### **Resolutions of the Grounds of Appeal:**

As to the duty of this Court as a first appellate Court, **Kifamunte Henry V Uganda: Supreme Court Criminal Appeal No 10 of 2007** sets out the same as being:

*“...the first appellate Court has a duty to review the evidence of the case and to reconsider the materials before the trial Judge. The appellate Court must then make up its own mind not disregarding the Judgment appealed from but carefully weighing and considering it”.*

**Rule 30(1)(a) of the Rules of this Court** is to the effect that the first Appellate Court has the duty to re-appraise the evidence and draw inferences of fact.

I shall keep the above principles in mind when resolving the grounds of appeal.



**Ground 1:**

In the Ruling in High Court, Mbarara, **Civil Application No. HCT-05-CV-CR-0011 of 2013** between the Appellant and the Respondents in this Appeal, the trial Judge held in paragraphs 10 and 11 of the Ruling that:

*“[10] In the final analysis this application partly succeeds and the decision of Court in Civil Suit No. 54 of 1977 still stands and this Court hereby sets aside the letter of the Chief Magistrate Mbarara dated 9<sup>th</sup> December, 2009.*

*[11] However, this application fails in as far as it relates to the Judgment of the LC1 Court of Kigoro delivered on 10<sup>th</sup> September, 2007 the same is left to stand. The people who are occupying the suit land by virtue of this LC1 Court decision should continue doing so”.*

On the facts of the case, the above holding in the two paragraphs was contradictory. This is because the Court decision delivered on 17<sup>th</sup> May, 1978, in **Civil Suit No. 54 of 1977** held Yosamu Rwomuyaga to be the owner of the land at Kigoro cell, Rukingo Parish, Kashari, Mbarara District. Execution of the Court Decree was carried out and Yosamu Rwomuyaga was put in possession of the said land. Unfortunately soon thereafter he was shot dead with a gun under strange circumstances.

The Appellant to this Appeal, Baryaija Julius, being a son of the



late Yosamu Rwomuyaga, succeeded his father and by virtue of that succession took over ownership of the suit land.

The two Respondents to this Appeal and others, began trespassing upon the suit land soon after the gunning down of Yosamu Rwomuyaga.

On 10<sup>th</sup> September, 2003 after the Appellant had once again been put in possession of the suit land through a Court execution process, the two Respondents and four others were arrested and charged in the 2<sup>nd</sup> Grade Magistrate Court of Bwizibwera with removing boundaries and wrongfully taking possession of the suit land. They were convicted and were each sentenced to six months imprisonment. However on appeal, they were acquitted of the criminal offences. They none the less were not vested by the acquitting Criminal Court with ownership of the suit land, the offences having been purely criminal.

On being released from prison, the Respondents and others, repeated the same trespass upon the Appellant's land. The Appellant sought relief from the Chief Magistrate's Court, and later the High Court, Mbarara.

In the meantime on 26<sup>th</sup> August, 2007, the two Respondents lodged in the same Kigoro LC1 Court, Rubingo Parish, Kashari, Mbarara District, **Case No. 25 of 2007** against the Appellant over the very issue of ownership of the suit land. The said LC1 Court decided the case against the Appellant because, amongst



other reasons, the LC1 Court had never seen the Appellant on the disputed land and he had also never sued the Respondents. The LC1 Court thus held that the Respondents were owners of the land having been born on the said land and also because the Appellant had not attended the LC1 Court when summoned to appear in that **Case No. 25 of 2007**.

It follows therefore that by holding as he did, in paragraphs 10 and 11 of the Ruling, as stated above, the Trial Judge was in effect reversing the decision of the 2<sup>nd</sup> Grade Magistrate Court of Bwizibwera in **Civil Suit No. 54 of 1977** that held that Yosamu Rwomuyaga was the owner of the Suit land. The Kigoro LC1 Court, Rubingo Parish, Kashari, Mbarara District, was now holding that the Respondents were the owners of the suit land having even been born thereon.

Therefore, the Appellant as successor to Yosamu Rwomuyaga was not the owner of the said suit land. Thus the two decisions were contradictory. The trial Judge had the opportunity to deal with the contradiction in the Application for Review, **HCT-05-CV-MA-126 of 2015**, whereby the Respondents, as Applicants, sought as against the Appellant, review of the trial Judge's Ruling in **HCT-05-CV-CR-0011 of 2013**.

The learned trial Judge in a Ruling in **HCT-05-CV-MA-126 of 2015** dated 29<sup>th</sup> January, 2016 refused to review Para 11 of the Ruling in the earlier **Application HCT-05-CV-CR-0011 of 2013**, already set out earlier in this Judgment. The trial Judge



gave as a reason for his refusal to review to be:

*“the people referred to in Paragraph 11 were indeed not parties to the earlier decision in Civil Suit No. 54 of 1977 and they should not be evicted from the land in issue”.*

By so holding, the trial Judge in effect declared the Appellant not to be the owner of the suit land. A re-evaluation of the evidence on record however shows differently.

The trial Judge ruled as he did, being oblivious of the evidence on record (Pages 106 and 132 of the Record of Appeal) that the Respondents and others, claimed to have been settled on the suit land by one Tumusiime Mafure, son of the late Babiheraki Asanasio, whom the 2<sup>nd</sup> Grade Magistrate Court held in **Civil Suit No. 54 of 1977** not to be the owner of the suit land.

*Section 7 of the Civil Procedure Act provides that:*

*“7. Res-Judicata.*

*No Court shall try any suit or issue or issues in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try the subsequent suit, or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that Court”.*

The above Section is couched in mandatory terms. A decision



made by a competent Court cannot be challenged or altered in any subsequent suit except through an appellate process as provided by law.

**In Maniraguha Vs Nkundiye: Civil Appeal No. 23 of 2005**, this Court of Appeal held that:

*“In-fact **Res-Judicata** is a plea of Jurisdiction. Section 7 of the Civil Procedure Act bars any Court from trying a suit or even an issue that is **Res-Judicata**”*

It follows therefore that the 2<sup>nd</sup> Grade Magistrate Court of Bwizibwera in **Civil Suit No. 54 of 1977** having conclusively resolved that the land, the subject of the litigation, belonged to Yosamu Rwomuyaga and not Asanasio Babiheraki, the Trial Judge erred when he held as he did, allowing the Respondents to remain occupying the land in issue by virtue of the decision of the Kigoro LC1 Court in **Case No. 25 of 2007** that the Respondents pursued against the Appellant before that LCI Court.

That Civil Case was barred by the Res-judicata doctrine as it determined the same subject matter and between the same parties deriving title from the original parties to **Civil Suit No. 54 of 1977**. The Appellant got title from Yosamu Rwomuyaga, while the Respondents, claimed to have got title from Tumusiime Mafure, a son of Asanasio Babiheraki.

Ground 1 of the Appeal is therefore allowed.

## **Ground 2:**

The reasons relied upon to allow ground 1 of the appeal equally apply to this ground 2.

The trial Judge ought to have appreciated the fact that the Appellant had derived title to the suit land from Yosamu Rwomuyaga, the original Plaintiff in **Civil Suit No. 54 of 1977**; and that the Respondents were claiming to having been brought to the same land by one **Tumusiime Mafure**, son of Babiheraki Asanasio, the Defendant to **Civil Suit No. 54 of 1977** and whom the 2<sup>nd</sup> Grade Court declared in the same case not to be the owner of the suit land. The Respondents were thus asserting that their title to the suit land to be from Babiheraki Asanasio.

The Trial Judge, with respect, thus erred to hold that because the parties in LC1 Court of Kigoro **Case No. 25 of 2007: Kikwisire Zaverio and Kabarebe Burazio Vs Baryaija Julius**, were not the parties in the 2<sup>nd</sup> Grade Magistrate Court Bwizibwera **Civil Suit No. 54 of 1977**, therefore the LC1 Court of Kigoro Judgment in **Case No. 25 of 2007** remained undisturbed and that those who were occupying the suit land by virtue of the said Judgment were to continue doing so.

The Trial Judge was in error because the parties to the LC1 Court of Kigoro **Case No. 25 of 2007** were claiming the suit land in that case as parties deriving the claimed respective titles to the suit land from the parties to the 2<sup>nd</sup> Grade Magistrate Court of Bwizibwera in **Civil Suit No. 54 of 1977**.

Accordingly ground 2 of the Appeal is also allowed.

**Ground 3:**

In respect of this ground, it is appreciated that **Case No. 25 of 2007** was lodged in the LC1 Kigoro Court on 26<sup>th</sup> August, 2007. The Court rendered Judgment in the same on 10<sup>th</sup> September, 2007.

During the material period of this case, **Kigoro LCI Court Case No. 25 of 2007**, the law conferring upon the Local Council Courts was the **Land Act, Cap 227**, the **Land (Amendment) Act No. 1 of 2004** and the **Local Council Courts Act No. 13 of 2006**.

Originally under the **Executive Committees (Judicial Powers) Act, Cap 8, Section 2**, thereof, every executive committee from village to sub-county levels was a Court of Law to exercise Jurisdiction set out under the schedules under that section. In 2006, Parliament enacted the **Local Council Courts Act No. 13 of 2006**, and **Section 50(1)** of that Act, repealed the **Executive Committees (Judicial Powers) Act** under which Local Council Courts were vested with jurisdiction to try certain cases.

However, **Section 30 of the Land (Amendment) Act, 2004**, introduced **Section 76 of the Land Act** providing that Parish or Ward Executive Committee Courts shall be the Courts of first instance in respect of land disputes. Village Executive Committees, that is LCIs, were excluded from being Courts of first instance in land disputes.

It follows therefore that, as a matter of statutory law, during the period of 26<sup>th</sup> August, 2007 when **Case No. 25 of 2007** was lodged and 10<sup>th</sup> September, 2007 when Judgment was delivered by the LC1 Court Kigoro, that Court had no powers in law to entertain a land dispute as a Court of first instance. See: **Court of Appeal Civil Appeal No. 89 of 2011 Nalongo Burashe Vs Kekitiibwa Mangadalena**. See also the persuasive High Court decision of **High Court Civil Revision No. 033 of 2011: Busingye Jamiya Vs Mwebaze Abdu and Another**.

In 2006, **Constitutional Petition No. 21 of 2006 Rubaramira Ruranga Vs the Electoral Commission and Attorney General** was lodged in the Constitutional Court.

Amongst the Constitutional issues resolved in that Petition, was one whether or not the Local Council Executive Committees elected under the Movement System, and not under the Multi-Party System adopted by the country through a Referendum in 2006, were in compliance with the Constitution. The majority decision (4 to 1) of the Constitutional Court delivered on 3<sup>rd</sup> April, 2007 was that such Committees were unconstitutional and thus null and void.

It also follows therefore that the Kigoro LC1 Court was not valid in law at the material time it determined **Case No. 25 of 2007**. The trial Judge erred to rely on that case to hold that:

***“The People who are occupying the suit land by virtue of this LC1 Court decision should continue doing so”.***

Ground 3 of the appeal is also allowed.

**Ground 4:**

This Court finds that this ground of appeal is too general and offends the provisions of **Rule 86** of the Rules of this Court. The Rule requires that a memorandum of appeal sets forth concisely and under distinct heads, the grounds of objection to the decree appealed from without argument or being narrative. The grounds of appeal should specifically point out errors observed in the course of the trial, including the decision, which the Appellant believes occasioned a miscarriage of justice.

In **National Insurance Corporation vs. Pelican Air services, Civil Appeal No. 15 of 2003** the Court of Appeal held that a ground which offends the above Rule should be struck out. See also: **Katumba Byaruhanga v. Edward Kyewalabye Musoke, C.A. Civil Appeal No. 2 of 1998; (1999) KALR 621; Attorney General v. Florence Baliraine, Court of Appeal Civil Appeal No. 79 of 2003.**

I therefore find that ground 4 offends **Rule 86** of this Court. The same is struck out.

In the final result, having found grounds 1,2 and 3 of this appeal in the affirmative, this appeal is therefore allowed. The holding by the Trial Judge that:

**“However, this application fails in as far as it relates to the Judgment of the LC1 Court of Kigoro delivered on 10<sup>th</sup> September, 2007 the same is left to stand. The people who are**

**occupying the suit land by virtue of the LC1 Court decision should continue doing so”, is set aside.**

The Judgment of the LC1 Court of Kigoro, in **case No. 25 of 2007** delivered on 10<sup>th</sup> September, 2007 is also set aside as being null and void in law by the reason of the “*Res-Judicata*” principle, and also by reason that at the material time the decision was made, the Kigoro LC I Court had no powers under the law to entertain the said case. Each one of these grounds is independent of the other.

The Judgment of the 2<sup>nd</sup> Grade Magistrate, Bwizibwera in **Civil Suit No. 54 of 1977** is the valid Judgment. The Appellant, Baryaija Julius as successor to Yosamu Rwomuyaga is the owner of the suit land as determined in that **Civil Suit No. 54 of 1977**.

As to costs since the Appellant has succeeded in grounds 1,2 and 3, substantial grounds of the appeal, he is awarded the full costs of this Appeal as well as full costs in Court of Appeal **Civil Application No. 324 of 2016** for leave to appeal and in the High Court **Civil Application No. HCT-05-CV-CR-0011 of 2013**. The order as to costs made by the trial Judge in **Civil Application No. HCT-05-CV-MA-126 of 2015** remains undisturbed.

It is so ordered.

Dated at Kampala this...<sup>21<sup>st</sup></sup>.....day of...<sup>July</sup>.....2021.



A handwritten signature in blue ink, appearing to read 'Remmy Kasule', is written over a horizontal dotted line. The signature is stylized and cursive.

**Remmy Kasule**  
**Ag. Justice of Appeal**



**THE REPUBLIC OF UGANDA  
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**VERSUS**

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**2. KABAREBE BURAZIO** }

*(An appeal, with leave of this Court, arising from the decision of David Matovu, J. in High Court Civil Application No. 324 of 2016)*

**CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.  
HON. LADY JUSTICE MONICA MUGENYI, J.A.  
HON. MR. JUSTICE REMMY KASULE, Ag. J.A.**

**JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.**

I have had the opportunity of reading the draft Judgment of the Hon. Mr. Justice Remy Kasule, Ag. J.A.

I agree with his Judgment and I have nothing to add. Since the Hon. Lady Justice Monica Mugenyi, J.A. also agrees, we hereby order that:-

1. The Appeal is allowed.
2. The Judgment of the LC1 Court of Kigoro in Case No. 25 of 2007 is hereby set aside as being null and void in law.
3. The Judgment of the Grade II Magistrate, Bwizibwera in Civil Suit No. 54 of 1977 is hereby upheld.
4. Costs of this Appeal as well the costs in Civil Application No. 324 of 2016 and in High Court Civil Application No.11 of 2013 are awarded to the Appellant.
5. The trial Judge's Order as to costs in Civil Application No. 126 of 2015 remains undisturbed.

**It is so ordered.**



Dated at Kampala this.....26<sup>th</sup>..... day of .....Aug.....2021.



.....  
**HON. MR. JUSTICE GEOFFREY KIRYABWIRE**  
**JUSTICE OF APPEAL**



THE REPUBLIC OF UGANDA

**THE COURT OF APPEAL OF UGANDA  
AT KAMPALA**

**CORAM: KIRYABWIRE, MUGENYI, JJA AND KASULE, AG. JA**

**CIVIL APPEAL NO. 301 OF 2017**

**BETWEEN**

**JULIUS BARYAIJJA ..... APPELLANT**

**AND**

- 1. BONIFACE KARAMAGI (As Administrator of  
The Estate of ZAVERIO KIKWISIRE)**
- 2. BURAZIO KABAREBE ..... RESPONDENTS**

**(Appeal from the Ruling of the High Court of Uganda at Mbarara (Matovu, J) in Civil  
Application No. 126 of 2015, itself arising from Civil Application No. 11 of 2013)**

**JUDGMENT OF MONICA K. MUGENYI, JA**

I have had the benefit of reading in draft the lead Judgment of Hon. Justice Remmy Kasule, Ag. JA in this Appeal. I agree with the decision arrived at and the orders therein, and have nothing useful to add.

Dated and delivered at Kampala this *26<sup>th</sup>* day of *Aug*....., 2021.

*Monica K. Mugenyi,*

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**Hon. Lady Justice Monica K. Mugenyi**  
**JUSTICE OF APPEAL**