

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBALE
HCT-04-CV-MA-0028/2003

[ARISING FROM JUDGMENT OF LC.II KUMI PARISH]

[ARISING FROM JUDGMENT OF L.C I OF MORUTEMEL VILLAGE]

OLEBO SAMWIRI.....APPLICANT/DEFENDANT

VRS

ALEGETE ROSE.....RESPONDENT/PLAINTIFF

BEFORE: THE HON. LADY JUSTICE F. MWONDHA

REVISIONAL ORDER.

This case came before me on application by counsel for the applicant under Section 84 of the C.P.A S. 101 of the Civil procedure Act and or. 48 rr 1 & 3 of the C.P.R. He prayed that the suit L.C II of Akum parish dated 8/11/2002 at the judgment of L.C1 morulemel village dated 20/8/2001 be revised and set aside and that costs be provided for. There were grounds set out in support of the application and briefly were as follows:

1. That there was no lawful L.C 1 judgment purportedly passed.
2. That the Chairman L.C II court Akum was forced to write the judgment in favour of the applicant.
3. That before judgment was made L.C 1 court, the respondent took the matter to L.C II court on the 15th day of October, 2001.
4. That the L.C II is an appellate court which didn't have original jurisdiction to handle the said suit dispute.
5. That even if there was a valid agreement against the decision of the L.C 1 judgment, that the L.C proceedings were null and void.
6. That it was in the interest of justice and equity that this honourable court raises the said illegal judgment and set the same aside.

The application was further supported by affidavits deponed by the applicant under section 84 there is a proviso which provides among others that the power for revision shall not be exercised unless the parties shall first be given the opportunity of being heard or where from lapse of time or other cause, the exercise of such power would include serious hardship to any person.

In this case the other party (respondent) was effectively served as per the return of the affidavit of service filed on 14/5/2003. The respondent on her representative ever attended court and neither was there any explanation to her inability to attend court on the 26.5.2003. the case proceeded without hearing her therefore.

Learned counsel for the applicant submitted in support of the grounds as afore mentioned. I listed to his submissions attentively, I also carefully read the affidavits in support of the application, I carefully perused the proceedings and judgments of the two courts i.e. LC1 and LCII court and I have found the following:

- a) As far as the ground is concerned the law governing the L.C courts which is Resistance committees Judicial powers) Statute 1988 particularly Section 3 (1) provides for the quorum of court to be not less than five of the particular resistance committee members. S.3 (4) give powers for the committee to co-opt any such members of resistance council of the same area as to enable the court to realize a quorum.
- b) The L.C 1 and L.C II court proceedings on record there was no judgment for L.C 1 at least I didn't come across one. Neither was there any record to show whether there was a quorum or not or a record to show how many members of the committee constitute this court. According to the record from LC.II the people who constituted the L.C II court were as follows:
 1. Opio Moses – Secretary
 2. Oletu Steven – Chairman L.C II
 3. Omoko Honard – Chairman L.C II
 4. Okwangiro – paish chief
 5. Adiamama Joshua – parish chief

Its not clear whether Opio Moses was secretary L.C II or a co-opted member of L.C II council or otherwise. One Oletu Steven is not known whether he was councilor L.C II or L.C I Okwagire

who is referred to as parish chief is not a member of the court, so is Adiama Joshua who is secretary L.C I.

It goes without saying that the L.C II court was irregularly constituted in that it lacked jurisdiction accordingly to section 3(1) and (4) of the Resistance committee (judicial powers) Statute.

This makes the judgment passed by it unlawful and couldn't be enforced by law. This also is coupled with the fact that there was no judgment at all from the L.C I court so the judgment at L.C II couldn't have any basis. But even if the judgment was there, since, the record of L.C I proceedings didn't show who the members of the courts were, that judgment would be still irregular and or unlawful Considering the above foregoing it goes without saying that the S. 84(c) was highly applicable. It was satisfied that the L.C I and L.CII courts acted in exercise of their jurisdiction illegally and with material irregularity and injustice. On that basis alone, I would order the Revisional order.

But before I take leave of this matter, I would like to comment on learned counsel ground that the L.C II court was merely an appellate court and was not entitled to hear the suit *denovo*.

I hasten to say that, learned counsel for the applicant an oversight on this ground since S. 28 of the Resistance Committees (Judicial Powers) Statute 1988 provides for production of witness in the appellate court and it can in its discretion determine or may hear the case *denovo*.

Having said that as earlier said this is a case where a revisional order is fit to be made. According the proceedings of L.C I court and the proceedings of the L.C II court and the proceedings of the L.C II court and its judgment therein is hereby revised and set aside forthwith.

I direct that the case starts *denovo* in the appropriate magistrate Grade I court for proper record keeping and in the interest of justice. For avoidance of doubt, the parties are in the position they were in before the case was commenced in the L.C I court of Morutemel. The complainant in L.C I court of Morutemel should institute fresh pleadings in the appropriate Magistrate Grade I court.

I shall make no order as to costs.

Right of appeal explained.

F. Mwondha

Judge

10/6/2003.