

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

HCT-04-CV-MA-0004-2010

**(FROM CIVIL SUIT NO. 1/2008 AND MBAJJA LC.I & BUSIA CIVIL SUIT
NO. 65/2008)**

PASKALI JUMA WASIKE.....APPLICANT

VERSUS

1. ALEX ONYANGO SITUBI

2. TAABU NYABYA

3. MUGENI CHRISTINE.....RESPONDENTS

BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN

RULING

On behalf of the applicant M/s Zaabwe and Co. Advocates filed this application for Revision under sections 83 and 98 of the Civil Procedure Act asking court to revise the LC.I of Mbaja Mugungu judgment and the Chief Magistrate's Decree and execution orders.

According to the applicant the grounds for the application are that:

- i) The LC.I Court had no jurisdiction over a case involving 1,539,000/=.
- ii) The chairman LC.I Bernard Barasa was the one who sold the land in dispute to the 1st Plaintiff. That because of this he was not legally entitled to participate in the proceedings and judgment in this case and to sign the judgment.

- iii) The LC.I Chairman compelled some members of the court i.e. the Vice Chairman, Secretaries for Defence, Women and environment to sign the judgment.
- iv) The LC.I Court based its judgment on Statements made by the plaintiffs but not evidence and that by doing so the court denied the applicant the right to cross examine the plaintiffs.
- v) By annexure E the Vice Chairman wrote and informed the Chief Magistrate of Busia that the LC.I Court's judgment was unlawful.
- vi) That the High Court of Uganda has powers and jurisdiction to revise a judgment and order of a subordinate court when:
 - a) There are errors in the proceedings, judgment and order.
 - b) The proceedings and judgment are made irregularly.
 - c) The judgment or order defeats the ends of justice.

Therefore the Chief Magistrate's drawing, signing and executing the LC.I Court decree was irregular. Further that it was irregular for the Chief Magistrate to issue a Warrant of attachment in respect of costs which were ordered by the LC.I Court. That this defeated the ends of justice.

In his submission in reply M/s Ayigihugu & Co. Advocates raised, preliminary points of law pointing out that the instant application is misconceived in law and should be rejected with costs. According to Mr. Ayigihugu an applicant for revision must fulfill the following conditions.

- (1) He must show that the case has been determined under the Act i.e. Civil Procedure Act.
- (2) He must show that the case has been determined by any Magistrate under the Act.

(3) He must show that the court;

a) exercised jurisdiction not vested in it.

b) acted in excess of its jurisdiction.

c) failed to exercise a jurisdiction so vested

Or d) acted in exercise of its jurisdiction illegally or with material irregularities or injustice.

According to Mr. Ayigihugu the judgment which the applicant wants court to revise was determined by the LC Court of Mbajja Mungungu under the Local Council Courts Act 2006. That the case was not determined under the Civil Procedure Act. That it has not been shown that the Magistrates Court,

(i) exercised jurisdiction not vested in it in law.

(ii) failed to exercise a jurisdiction vested in it and

(iii) acted in exercise of its jurisdiction illegally or with material irregularity or injustice.

Mr. Ayigihugu further commented that an LC Court is not a subordinated court to the High Court unless a matter came by way of appeal. That section 83 of the Civil Procedure Act by implication excludes LC Courts as subordinate courts to the High Court. Therefore this court has no jurisdiction to revise the judgment of the LC Court under S.83 of the Civil Procedure Act. Regarding the drawing, signing and executing the LC.I Court's Decree, Mr. Ayigihugu referred to S.10 (3) of the Local Council Courts Act 2006 as authorizing him/her to do so.

I will first deal with the preliminary points of law raised by Mr. Ayigihugu.

According to S.14 (1) of the Judicature Act,

“The High Court shall, subject to the Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or this Act or any other law.”

The Judicature Act further provides that,

“(2) Subject to the Constitution and this Act, the jurisdiction of the High Court shall be exercised
(b).....in conformity with
(iii) the powers vested in, and the procedure and practice observed by, the High Court immediately before the commencement of this Act in so far as any such jurisdiction is consistent with the provisions of this Act.”

The Act goes on to provide that,

“(c)where no express law or rule is applicable to any matter in issue before the High Court, in conformity with the principles of justice equity and good conscience.”

These provisions of the law give the High Court wide powers. The Constitution of Uganda and the Judicature Act give the High Court unlimited original jurisdiction in all matters, be they civil or criminal. These powers cannot be removed by implication. For a written law to oust such jurisdiction, it must expressly state so which is not the case under the Local Council Courts Act.

S.40 of the Local Council Courts Act enacts that:-

“40 The general power of supervision over Magistrates Courts conferred upon the High Court by the Judicature Act may be exercised by the Chief Magistrate over Local Council Courts on behalf of the High Court.”

The Legislature carefully chose the word “may” not shall to delegate – High Court powers of supervision to the Chief Magistrate. This means that section 40 only delegated the High Court power of supervision to the Chief Magistrate. This did not amount to ouster of jurisdiction. Where there is ouster of jurisdiction from the High Court, it must be in express terms and the next course of action stated in certain terms. In most cases where ouster is legislated, the matter is made to go for either arbitration or determination by a specified competent court or tribunal.

S.98 of the Civil Procedure Act was enacted purposely to preserve inherent powers of the High Court where there is no specific provision of the law to cure a situation. This section saves the inherent powers of court so that such powers should not be limited in any way by any provision in a given law.

In view of S.40 of the Local Council Courts Act, the High Court has supervisory powers over Local Council Courts and for this purpose those courts are subordinate to the High Court.

It is common knowledge that this court can either on its own motion usually while inspecting Magistrates Courts (in this case Local Council Courts) or when its attention is drawn by 3rd parties to certain irregularities:

“Call for the record of any case which has been determined by any subordinate court or Magistrate’s Court” and for reasons set forth in S.83 revise the said case making such order as it thinks fit if it is found that;

- a) *The Court exercised jurisdiction not vested in it in law.*
- b) *The court acted in excess of its jurisdiction.*
- c) *The court failed to exercise jurisdiction so vested or*
- d) *The court acted in exercise of its jurisdiction illegally or with material irregularity or injustice.*

Regarding the main application, I am of the considered view that Local Council Courts operate under the Civil Procedure Act in addition to the specific Local Council Courts Act. Under S.10 of the Local Council Courts Act it is enacted that:

“10 Legal jurisdiction.

(1) Subject to the provisions of this Act and any other written law, every Local Council Court shall have jurisdiction for the trial and determination of”

The Civil Procedure Act is any other written law and it defines court to mean,

“.....any court exercising Civil jurisdiction.”

The Local Council Courts Act envisaged the Civil Procedure Act among other laws. But instead of applying the Civil Procedure Rules, Local Council Courts apply the Local Council Courts Regulations under SI 2007 No.51.

I would like to point out that the law of Revision applies to jurisdiction alone, the irregular exercise or non exercise or the illegal assumption of it. The law is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. Where a court has jurisdiction to determine a question and it determines it, it cannot be said that it acted illegally or with material irregularity because it has come to an erroneous decision on a question of fact or law. ***MUTEMBA V. YAMULINGA [1968] EA 643.***

In the instant case, I agree with Mr. Zaabwe that the learned Chief Magistrate acted irregularly and illegally when he purported to sign an execution warrant for a matter heard and determined by the Local Council Court.

According to the Regulation 58 (3),

“Court shall not make an order for the attachment of the immovable or real property of a judgment debtor, crops in the field the dismantling of his or her dwelling house or the removal of a judgment debtor from the land except with a written consent of a Chief Magistrate.”

Under Regulation 3,

“Court means

- a) The village local Council Court*
- b) The Parish Local Council Court.*
- c) The Sub-County Local Council Court.*
- d) The Division Local Council Court or*
- e) The Town Council Court.”*

The law therefore does not empower the Chief Magistrate to assume powers of the Local Council Courts and issue warrants of execution. His powers involve writing to the concerned court allowing execution to go ahead if satisfied that it is proper to do so.

It is S.10 (3) of the Local Council Courts Act which gives the Chief Magistrate powers to execute awards exceeding 25 (twenty five) currency points which translates into more than 500,000/= (five hundred thousand shillings). In this case, the amount to be executed was 400,000/= which is below 25 currency points. The learned Chief Magistrate therefore exercised jurisdiction not vested in him/her.

Like wise, the learned Chief Magistrate had no authority to extract and sign a Decree in original suit in case tried by a Local Council Court. Apart from the intermeddling by the learned Chief Magistrate, whatever the LC.I, Court of Mbajja Mugungu did was within their jurisdiction. Misapplication of the said jurisdiction cannot be a subject for revision.

I decline to make any revision orders. The applicant ought to have appealed instead of seeking for revision. The matter is remitted back to the LC. Court to implement its decision.

I will make no order as to costs.

Musota Stephen

JUDGE

21.12.2010

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Applicant in Court.

RC.I R.C.II in Court.

R.III absent.

Kimono Interpreter.

Applicant: My lawyer is coming.

Respondents: My lawyer is sick. He says I get the ruling.

Court: Ruling delivered.

Musota Stephen

JUDGE

21.12.2010