

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

**HCT-05-CV-M A-050-2001**

BENON KWETEGYEKA.....APPLICANT

VS

KASHOKYE.....RESPONDENT

**BEFORE: THE HON. MR. JUSTICE LAWRENCE GIDUDU**

**R U L I N G**

This application was filed in June 2001 under the then Sections 84 and 101 of CPA and the then Order 48 rule 1 CPR.

It first appeared in court in January 2004 and was adjourned several times for various reasons until October 2009 when I directed that written submissions be filed.

True, both counsel filed written submissions and the clerk shelved the file without bringing it to my attention to write a Ruling. It was not until recently when I was going on my official leave that I took audit of pending judgments that I saw this file.

This briefly explains the delay in disposing of this matter.

Any how, the gist of this application is that the LC1 Court exercised jurisdiction it did not have when it decreed the land in dispute to the present Respondent who was the Plaintiff at the trial.

The background as gathered from the translated proceeding of the LC1

Court of Rugarama, Bubaare, Kashari is that the Respondent sued the Applicant in the LC 1 Court for trespass to his land. He justified his claim before the LC Court that on 16/6/99, he lent the Applicant 14,000,000/= and the Applicant guaranteed payment by offering one of his bibanja at Kiogo. The money was to be repaid on 16/6/2000. The Applicant failed to repay the money and the Respondent enforced the guarantee by taking the land. It was Mr. Mwene-Kahima's submission that the LC 1 Court could not enforce a transaction where the subject matter is beyond 5,000/=. He cited Section 5 of the defunct Executive Committees (Judicial Powers) Act in support.

In reply Mr. Katembeko contended that the application has no merit because the issue before the LC Court was trespass and not contract and further that an appeal to the LC III would have been the right option.

With respect, this is a matter I would have ruled upon straight away if I had taken the submissions orally in open court.

It is very clear before the LC Court as shown by the proceedings that the Respondent lent money to the Applicant and the Applicant, though he denies this fact, was supposed to repay the after one year on 18/6/2000. Indeed the Respondent demanded back his money and when the Applicant failed to repay, the Respondent decided to take the land that the Applicant had staked as security.

When the LC 1 Court decreed the land to belong to the Respondent, the LC Court was enforcing this transaction in which


14 million was at stake. The Respondent cannot claim ownership of the disputed land without mentioning that he took it as security the Applicant having failed to repay the loan of 14 million. It is 14 million that is at the centre of the transaction and moreover this was not a sale but a kind of rudimentary mortgage.

Clearly LC 1 Court had monetary no jurisdiction to entertain this matter for it exceeded the 5,000/= limit imposed by the defunct **Executive Committees (Judicial Powers) Act** as indicted in the first schedule thereto.

Under the then Section 84 CPA which is the current Section 83 (a) of the Same Act, the LC 1 Court of Rugarama exercised jurisdiction not vested in it by law.

At that time, not even the Chief Magistrate's Court could grant the Respondent the remedy since the jurisdiction of the Chief Magistrate was limited to 5 million. Only the High Court could enforce it at that time.

Without much ado, the orders of the LC 1 Court of Rugarama are hereby set aside by way of revision. The Respondent, if he wishes, may go to the Magistrate's Court to seek any remedies he deems fit. The Respondent shall pay the costs of this application.




Lawrence Gidudu  
**J u d g e**  
5/6/2010

## **Order**

Since I am still on leave, the file is sent to the Deputy Registrar to

summon the parties or their counsel and read the Ruling.



Lawrence Gidudu  
**J u d g e**

5/6/2010

30/6/2010

Ruling read in the presence of counsel Katembeko for the Respondent.

Other parties absent.

**Chemutai Tom**  
**Deputy**  
**Registrar**

30/6/2010