

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

1. HCT-04-CV-CR-0007-2011

(FROM BUSIU LC.III CIVIL SUIT NO. 001/2011)

MUTONYI MARGRET WAKYALA.....APPLICANT

VERSUS

TITO WAKYALA.....RESPONDENT

2. HCT-04-CV-CR-0008-2011

(FROM NAMABYA LC.III CIVIL SUIT NO. 004/2011)

BETTY MAKUTUSI.....APPLICANT

VERSUS

WASWA HASSAN.....RESPONDENT

3. HCT-04-CV-CR-0009-2011

(FROM BUKIENDE LC.III CIVIL SUIT NO. 12/2009)

MARGRET NAMBUYA.....APPLICANT

VERSUS

KABOOLE STEPHEN.....RESPONDENT

4. HCT-04-CV-CR-0010-2011

(FROM NAKALOKI LC.III CIVIL SUIT NO. 02/2010)

SHABAN WANGOLO.....APPLICANT

VERSUS

JOHN EMMANUEL MASAYA.....RESPONDENT

5. HCT-04-CV-CR-0012-2011

(FROM BUSIU LC.III CIVIL SUIT NO. 48/2011)

WAKAPIRI CHARLES.....APPELLANT

VERSUS

MASINDE RICHARD.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN

REVISION ORDERS

Before me are 5 Revision files listed above which concern the same subject matter as contained in a write up from the Chief Magistrate addressed to the learned Deputy Registrar regarding the propriety of proceedings handled by the various LC.III Courts as courts of first instance. I will quote verbatim the views of the learned Chief Magistrate while requesting for possible revision orders as follows:-

“All the above land disputes were handled by the respective LC.III Courts and referred to me either on complaint or with requests to order execution proceedings.

Upon perusal, all were handled by LC.III Courts as courts of first instance. The courts usually move under S.22 (5) of the Local Council Courts Act (LCCA) which provides;

“At the hearing of a case in a town, division or sub-county local council court whether sitting as original or appellate court a summary of evidence given by each person shall be recorded separately.”

In my opinion the above section does not confer upon the LC.III Court powers to act as court of first instance. Jurisdiction is determined by S.10 and 11 Local Council Courts Act (LCCA) and by implication S.32 which determines how appeals lie from LC.I to LC.II to LC.III etc. But more specifically, jurisdiction of LC Courts in land

matters is conferred by S.76A (1) of the Land (Amendment) Act 2004.

It provides

“Notwithstanding the provisions of Ss 5,7 and 29 of the Executive Committee (Judicial Powers) Act, the parish or Ward Executive Committee Courts shall be courts of first instance in respect of land disputes.”

S.5, 7 and 29 are similar to S.10, 11 and 32 of the LCCA which amended the Executive Committee (Judicial Powers) Act.

Based on the above I believe the LC III Courts acted without jurisdiction and may continue to do so unless checked. I’m forwarding the files to you for placement before the Resident Judge for Revision Orders under S.83(a) of the Civil Procedure Act or for determination of the following questions of law under S.16 (2) of the Judicature Act.

Questions:

(1) Whether S.22 (5) of the Local Council Courts Act confers upon LC.III Court powers to determine land disputes as a court of first instance.

(2) If so, how does that affect S.76A of the Land (Amendment) Act, 2004 and how does it affect the jurisdiction of the LC.II Courts.”

After studying the legislation referred to by the learned Chief Magistrate, I tend to agree with her views. The law which establishes and outlines the composition of Local Council Courts is The Local Council Courts Act 2006. This Act has to be read together with The Local Council Courts Regulations 2007 which lays down

the procedure to be followed while filing cases in the local council courts and how the hearing of the said cases have to be conducted in the respective courts.

Under S.10 LCCA, subject to any other written law every local council Court shall have jurisdiction for the trial and determination of---

- a) Causes and matters of a civil nature specified in the second schedule to the Act. The second Schedule lists the matters as.
 1. Debts
 2. Contracts
 3. Assault of Assault and batter
 4. Conversion
 5. Damage to property
 6. Trespass.
- b) Causes and matters of a civil nature governed by customary law specified in the third schedule and these are
 - (i) disputes in respect of land held under customary tenure;
 - (ii) disputes concerning marriage, marital status, separation, divorce or the parentage of children;
 - (iii) disputes relating to the identity of a customary heir;
 - (iv) customary bailment.
- c) Causes and matters arising out of infringement of bye laws and ordinances duly made under the Local Government Act.
- d) Matters specified under the Children Act.

e) Matters relating to land.

S.10 LCCA goes ahead to specify the pecuniary jurisdiction for matters specified in the second schedule to be of a value not exceeding one hundred currency points and those in schedule three to be of unrestricted monetary value. According to the first schedule of the LCCA a currency point is equivalent to twenty thousand shillings.

S.11 of the LCCA provides for where to institute suits thus:-

“(1) Every suit shall be instituted in the first instance in a village local council court if that court has jurisdiction in the matter.....”

This jurisdiction envisages territorial and pecuniary jurisdiction and location where the defendant actually resides at the time of commencement of the suit or where the cause of action in whole or in part arises; or in the case of immovable property, where the property is situated.

Therefore regarding whether an LC.III Court has original jurisdiction, the answer is found in Regulation 32 of the Local Council Courts Regulations which amplifies S.11 LCCA. It provides that:-

“(1) Every suit shall be instituted in the first instance in a village local council court, within the area of whose jurisdiction the defendant resides at the time of the suit or where the cause of action in whole or part arises or where the immovable property in dispute is located.

As correctly pointed out by the learned Chief Magistrate neither S.22 (5) LCCA nor Ss.10 and 11 confer upon the LC.III Court powers to act as a court of first instance. The jurisdiction of the LC.III Court is found in S.32 which deals with the mode of appeal. A party dissatisfied with a judgment or order of a local Council Court may subject to the provisions of S.32 or any other written law appeal against the judgment or order

(b) of a parish local council court to a town division or sub-county council court.”

Therefore the respective LC.III Courts acted without jurisdiction when they heard the above cases as courts of first instance. Their actions were null and void *ab initio* and will be set aside on that account respectively.

Regarding the second question raised by the learned Chief Magistrate, this has to be considered in light of the enactment of the Local Council Courts Act which has been extensively considered herein above *vis-a-vis* S.76A of the Land Amendment Act 2004 which gave the LC.II Courts power to handle land matters as courts of first instance. There appear to be concurrent in land matters given to both the LC II Courts under the Land Amendment Act and LC I Courts the Local Council Act because the latter Act did not expressly repeal the former.

S.10 (1) of the LCCA commences thus:-

“(1) Subject to the provisions of this Act and of any other written law every local council court shall have jurisdiction for the trial and determination of matters relating to land.”

One may argue that S.76 A of the Land Act is “any other written law” which is still in force since it was not specifically repealed by the LCCA which is a later statute but this is likely to cause confusion and absurdities in view of the third schedule to the LCCA which gives Local Council Courts jurisdiction to handle civil disputes governed by customary law and disputes in respect of land. The LCCA goes ahead to provide that such disputes have to commence in the lowest council court which is a village court as per S.11 of the LCCA amplified by Regulation 32 of the Local Council Courts Regulations (supra).

It is my considered view that this absurdity can be resolved by applying the principles of statutory interpretation and rules which govern legislative drafting.

It is trite law that where an earlier statute is in conflict with a later one, the later statute prevails. This is a conclusion based on the assumption that the Legislature keeps abreast with the needs of the time and is wiser as time passes. ***Uganda Revenue Authority v. Uganda Electricity Board HCT-CA-001-2006.***

In ***Re Williams (1887) 36 ch. D 537 at 578*** held,

“And it appears to be a Constitutional necessity as well as an established rule of construction that the last utterances of the legislature should prevail over earlier statutes inconsistent with it.”

I will add that the Legislature cannot be assumed to have made a mistake when it enacted the Local Council Courts Act which is the later statute while an earlier Land Amendment Act which it had passed was still in force.

To justify this reasoning I will refer to the case of ***Income Tax v. Pemal (1891) A.C. 531 at 549*** followed in ***Supreme Court Civil Appeal 1 of 1989 the Attorney General v. Silver Springs Hotel Ltd and 9 Others. Lord Hulsbury*** said:

“But I do not think it competent for any court to proceed upon the assumption that the Legislature has made a mistake whatever the real fact may be, I think a Court of Law is bound to proceed on the assumption that the legislature is an ideal person that does not make a mistake.”

The Land (Amendment) Act No.1 of 2004 did allow the LC.II Court to handle matters concerning land disputes as a court of first instance removing jurisdiction from the LC.I Court. However by virtue of S.11 of the LCCA No.13 of 2006 this matter was revisited by the Legislature and as of now jurisdiction was restored to the LC.I Court. Suits have to be commenced in the LC.I court as a court of first instance. While there is no express repeal of the powers of the LC.II Courts under the Land Act in the LCCA, there is implicit or implied repeal thereof rendering the powers of LC.II Courts stale which cannot be enforced by any court of law.

Several well known principles of construction support my conclusion.

In Legislative Drafting and Forms 4th Edition at P.51 Sir Alison Russell K.C points out that:-

“The general presumption is against such a repeal on the ground that the intention to repeal if any had existed, would be declared in express terms; but it is not necessary that any express reference be made to the statute which is to be repealed. The prior Act would be repealed by implication --

(a) If its provision were wholly incompatible with the subsequent Act, or

(b) If the two Acts together would lead to wholly absurd consequences, or

(c) If the entire subject matter were taken away by the subsequent Act.”

Therefore the LCCA which is a later statute repealed S.76A of the Land Act by implication thus removing powers from the LC.II Courts acting as court of first instance in land matters. It also completely reformed the appeal process in land matters as provided for under S.32 of the LCCA.

Consequently I will hold that the LC.II Courts no longer have jurisdiction in land matters as courts of first instance.

All the affected decisions by the LC.III Courts in the above cases are null and void and are set aside.

Retrials will be conducted in accordance with the law and if parties so wish.

Musota Stephen

JUDGE

16.8.2011