

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT SOROTI

HCT-09-CV-CR. NO. 006/2011

EMULU MANASEAPPLICANT

VERSUS

AKELLO MANASE.....RESPONDENT

RULING

BEFORE: HON JUSTICE MUSOTA STEPHEN.

This is an application for revision. The Applicant Emulu Manase is represented by M/S Omoding, Ojakol & Okallany Advocates. The Respondent Akello Mary is represented by M/S Advocats legal aid Service providers.

The back ground to this application as can be deducted from the affidavit in support of the application is that the applicant litigated with the respondent in the LC.II court of Moru-Inera Parish over land and judgment was given in favour of the respondent. The applicant appealed to the LC.III Court of Orungo Sub County and the LC.II judgment was over turned. The respondent appealed to the Chief Magistrate who allowed the appeal setting aside the judgment of the LC.III court of Orungo on grounds of procedural irregularities because the LC.III court drew the map of the disputed land but did no reflect the size of the said land which would lead the respondent into claiming the entire land including that of the applicant. That this was irregular and indicates that errors apparent are on record.

In her affidavit in reply the respondent refutes all the averments by the applicant. That this application is aimed at delaying the respondent's enjoyment of her property as decreed by the learned Chief Magistrate. That the lower court's proceedings were properly handled. Under S.83 of the Civil procedure Act the High Court is mandated to call for any record of any case which has been determined under the Civil Procedure Act by any Magistrate's court if the court appears to have:-

- (a). exercised a jurisdiction not vested in it in law.
- (b). Failed to exercise a jurisdiction so vested .

(c) . Acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. for revision. The High Court may make such order in it as it thinks fit.

In the instant case, the LC II Court of Moru-Inera heard a land suit as a court of first instance contrary to the law. The decision the said court made was the basis of appeal to the LC.III court Orungo Sub County and eventually to the Chief Magistrate's court.

The jurisdiction of Local Council courts in civil matters is provided for under S.II of the Local council court's Act 2006.

It is provided that

“(1) Every suit shall be instituted in this first instance in a village

Local council court, if that court has jurisdiction in the matter

Within the area of whose jurisdiction.

- (a) The defendant actually resides at the time of the commencement of the suit ; or
- (b) Where the cause of action in whole or in part arises; or
- (c) In the case of a dispute over immovable property where the property is situated.”

Under s. 26 and the third schedule local council courts can try land disputes of land held under customary tenure.

In view of the above clear provisions of the law the LC.II Court of Moru-Inera Parish had no jurisdiction to entertain the dispute between the parties hereto since it was not a village LC. Court of first instance. It acted without jurisdiction. Jurisdiction is a creature of statute. Whatever a court purports to do without jurisdiction is a nullity ab initio. It follows therefore that no valid decision existed to be appealed in the LC.III Court Orungo and eventually to the Chief Magistrate's Courts. The subsequent orders of the LC.III and Chief Magistrate are therefore annulled and set aside.

A retrial is ordered in a court of competent jurisdiction.

Musota Stephen,

JUDGE

9.7.2012.

