

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

**HCT-04-CV-CR-0005-2011  
(Arising from Busia Civil SUIT No. 26/2007)**

**MARY OKOTCHI.....APPLICANT  
VERSUS  
ANNA MAKOKHA.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA**

**ORDER**

This matter is before me for Revision. Upon perusal of the record, I have discovered a lot of confusion surrounding this dispute. It has been to and from several judicial fora with no conclusive decision. I however noted two very important directives by two Chief Magistrates Busia. One is dated 24<sup>th</sup> October 2008. It was addressed to the LC.I Court Nangwe Shops, Busia Town Council. It says;

**“ANNA MAKOKHA V MARY OKOTCHI**

***The judgment of your court between the above two parties was placed before me to authorize execution.***

***Upon perusal, I found the judgment not definite.***

***You did not state clearly who won the case.***

***You did not show which party to give which part, what size of the land is one party to give the other.***

***I went to see the land, but still your judgment did not tally with the facts on the ground. The case file is herewith returned to you to define your decision so***

*that an aggrieved party may know what to appeal against.”*

It is not clear if this directive was complied with. But I am wondering on what basis it was given since the court addressed was *functus officio*.

Be that as it may, on 15<sup>th</sup> January 2009, the successor Chief Magistrate addressed his mind to the same dispute. In his directive to the LC.II Chairperson South West Parish Busia Town Council he wrote thus:

**“RE: LAND DISPUTE, INVOLVING MUSA AMOTTI, MRS MARY OKOTCHI AND ANNA MAKOKHA (07/01/2005)**

*The above refers.*

*The above case was before the LC.I Court of Nangwe Shops LC.I and disposed of by the said Court.*

*Instead of retiring (I think referring is what was intended) the dissatisfied party to your court for appeal purposes, the LC.I Chairperson erroneously referred the matter to Busia Land Tribunal (see copy of letter attached). The Chief Magistrate’s Court has no jurisdiction to handle the case this time. I now refer the matter to you for appeal purposes much as the appeal is out of time now, there is a justification for your court to hear it because the parties were referred to a wrong court (Land*

***Tribunal)when they should have been referred to your court.***

***Take this a matter of urgency.***

***C/M.”***

Interestingly according to annexure ‘A’ to this application which comprises the record of the Land Tribunal Busia it is recorded that no trial ever took place before the LC.I. It states that;

***“19/5/2005***

***Both parties present***

***Counsel: Majanga for respondent present.***

***Tribunal: Upon perusal of the record, this appeal is incompetent in assurance? as it was not heard before the lower courts and also no appeal lies from LC.I to this tribunal. Appeal is dismissed. Each party to bear own costs.***

***Chairman Land Tribunal.”***

There is no indication on record that the 2<sup>nd</sup> Chief Magistrate’s directive was complied with either. All indications however show that the directive was not complied with because, by the order of another 3<sup>rd</sup> Chief Magistrate dated 7 July 2010 the record show that it was ordered thus;

***“Since no appeal was preferred against the judgment of LC.I Nangwe Shop, let execution do issue. LC.I given a go ahead to execute their judgment.”***

Following a later complaint to the learned Deputy Registrar, execution was stopped on 14<sup>th</sup> January 2011. An order was given to maintain the *status quo*. A later Deputy Registrar lifted the order of stay thus;

***“The Chief Magistrate***

***Busia***

***RE: EXECUTION OF A COURT ORDER IN THE  
MATTER OF ANNA MAKOKHA VS MARY  
OKOTH IN LAND CASE NO. 001/205 BUSIA***

***The complaint to me refers which is self explanatory  
and copy attached.***

***As not to further delay justice, and legal processes,  
you are now instructed to continue with the  
execution process under law. Any aggrieved party  
can then appeal the process to the higher court.”***

This is indeed an interesting twist in view of the above confusion. The Chief Magistrate then allowed the court bailiff to swing into action hence this application.

At all levels of the dispute between the parties hereto, there has been confusion. I therefore find that there have been instances of glaring injustice meted out in this suit. Directives by courts of authority were neither implemented nor challenged. There have been no clear orders to be enforced.

It is my considered view therefore that for justice to be seen to be done to all the parties involved a fresh trial should take place before an impartial court with jurisdiction where everybody involved will be given a hearing.

All the contradictory orders on record are hereby set aside.

The claimant **Anna Makokha** should file a fresh case before the Chief Magistrate's Court of Busia through proper legal channels and the law so that she proves her claim as required.

Each party shall bear its costs.

**Stephen Musota**

**JUDGE**

**16.08.2012**