

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

MISC. APPLIC. 15 OF 2012

ARISING FROM DECISION OF LC II COURT OF OBUR PARISH DATED 26.7.2012)

ERIU MARCILOUSAPPLICANT

VERSUS

EPITU RAYMOND.....RESPONDENT

BEFORE HON. LADY JUSTICE H. WOLAYO

DECISION

In this application, the applicant seeks orders under section 83 (a) of the CPA and order 52 rr 1 and 2 and section 98 of the CPA, that this court calls for proceedings of LCII court of Obur delivered on 26.7.2012 for revision ;

That the decision and orders be set aside and costs be provided for.

The applicant was represented by Mr. Ewatu while Mr. Isodo appeared for the respondent.

Revision powers.

Section 83 (a) under which this application is brought provides :

The High Court may call for the record of any case which has been determined under this Act by any Magistrate's court ,

And the High court may revise the case and may make such order in it as it thinks fit

In this application, i am being asked to revise the orders of an LCII court. Section 83 clearly limits revision to cases determined under the CPA and by magistrates courts.

The import of revision is to halt the flagrant abuse of judicial power which may occur when a magistrate's court exercises jurisdiction not vested in it by law; or fails to exercise a jurisdiction so vested ; or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice.

Exercise of revision is therefore with regard to magistrates courts only.

Inherent powers

The applicant also cited section 98 of the CPA as an enabling clause. Section 98 confers inherent powers but those powers are to be exercised within the limits of the CPA . Section 1 of the CPA provides that the Act shall extend to proceedings in the High Court and magistrates court. Therefore, inherent powers are exercised within the limits of the law and not generally.

The Local Council Courts Act 13 of 2006, establishes LC courts and provides for their jurisdiction , appeal system and supervision . The Act does not provide for revision either by the High Court or by the Chief Magistrate's court.

Supervision

Section 40 provides that

' the general powers 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 Judicature Act section 17 limits supervision powers of the High Court to

- a) Prevent abuse of the process of the court by curtailing delays, in trials and delivery of judgment including power to limit and discontinue delayed prosecutions;
- b) To make orders for expeditious trials;
- c) To ensure that substantive justice shall be administered without undue regard to technicalities.

The supervision envisaged by section 17 is in case management and specifically to address delays in magistrates courts. The administrative supervision of LC courts by the Chief magistrate envisaged under section 40 of the LCCA is in the same spirit as section 17 of the Judicature Act. It is concerned with delays in judicial process.

Appeals

With regard to LC courts, the LCCA 2006 does not provide for revision of decisions of LC courts either by the Chief Magistrate or by the High Court. The only remedy available in case of abuse of power is by appeal to the next level of LC , the Chief Magistrate and thereafter to the High Court.

Under sections 11 and 26 of the Act, cases commence in LCI court (village court) . Section 32 of the Act provides for the appeal system. Appeals from orders and judgment lie to the LCII court, a second appeal to LCIII and

a third appeal to the Chief magistrate. Thereafter, with leave to the High Court.

Decided cases

Both counsel availed me two decisions by the High Court which to them seem to suggest that the High Court has revision powers over LC courts. In **Mutonyi Margaret Wakyal & ors v Tito Wakyal & ors CR 7 of 2011 (Mbale)**, on a reference for revision of LCIII decisions by the Chief Magistrate Mbale, Justice Musota pronounced himself on the reference and held that LCIII courts do not have original jurisdiction.

In another case cited by both counsel, Busingye **Jamaiya v Mwebaze Abdu & anor CR 33 of 2011, (Mbarara)**, Justice Bashaija ruled on an application for revision of the Chief Magistrate's decision concerning LC1 court.

It is noteworthy that both decisions in revision by the two courts were after the Chief magistrates had been seized of the cases. The revisions did not arise from a complaint about LC decisions directly to the High court but rather, the revisions arose after the chief magistrates who are the hear appeal had made pronouncements either administratively or in appeal.

The two decisions are therefore not authority for the proposition that the High court has revision powers over LC courts.

Directions

Consequently, I issue directions to counsel that in future, parties should appeal decisions or orders of LC courts to the next level of LC and thereafter to the Chief Magistrate. The threat of execution of an LC

decision or order does not arise unless a dissatisfied party has sat on his or her right to appeal . Otherwise, an appeal operates as a stay of execution. (section 31 of the LCCA).

This application is therefore dismissed with no order as to costs.

This decision shall apply mutatis mutandis to all applications for revision of LC court decisions arising directly from LC courts pending in the High Court at Soroti .

DATED AT SOROTI THIS 8TH DAY OF NOVEMBER, 2013.

HON. LADY JUSTICE H. WOLAYO