

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL REVISION 6 OF 2006

ARISING FROM SOROTI CHIEF MAGISTRATE'S COURT CIVIL APPEAL 4 OF 2007

EKWEU CHRISTINEAPPLICANT

VERSUS

THE REGISTERED TRUSTEES OF CHURCH OF UGANDA , SERERE.

BEFORE HON. LADY JUSTICE H. WOLAYO

RULING

This application for revision came up for hearing on 24.2.2014 and both Mr. Anguria for the applicant and Mr. Erabu for the respondent conceded that the application for revision be allowed . I undertook to study the court record and satisfy myself that indeed the orders of the Chief magistrate should be revised.

I am grateful to both counsel for their written submissions on the law regulating revision orders. Ms. Anguria & co. Advocates correctly cited the possible grounds for revision as stipulated in section 83 of the CPA . These are that

1. The court failed to exercise jurisdiction vested in it by law.
2. The court acted in excess of jurisdiction
3. The court failed to exercise jurisdiction
4. The court exercised jurisdiction but with material irregularity .

Both counsel are in agreement that HW Maruk acted with material irregularity when he ordered the LCIII court of Olio sub county to re-hear an appeal from the LCII court of Osuguru .

An examination of the judgment of the chief magistrate and proceedings of LCII and LCIII reveals that the case commenced in LCII instead of LCI. The chief magistrate found that the LCIII court heard the case afresh instead of handling the case as an appeal.

However, section 35 of the Local Council Courts Act 2006 empowers an appellate court to take fresh evidence or hear the case afresh. This is normal practice in all appellate courts. There was therefore no irregularity of the part of the LCIII when it called witnesses and visited the disputed land.

However, the fact that the case commenced in LCII instead of LC1 as stipulated in section 11 of the LCC Act 2006 is a material irregularity.

Under those circumstances, the chief magistrate ought to have quashed proceedings and judgment of LCIII court and ordered a re-trial in a competent court.

I accordingly find that the chief magistrate erred when he based his decision to quash LCIII proceedings on an erroneous reasoning. I substitute the order of the chief magistrate with an order quashing proceedings and judgments of LCII Osuguru and LCIII Olio sub-county on the basis that the case ought to have commenced in the LCI court of the area.

I order a re-trial before a grade one magistrate within the chief magistrate's magisterial area.

DATED AT SOROTI THIS 14TH DAY OF APRIL 2014.

HON. LADY JUSTICE H. WOLAYO