

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL REVISION NO. 9 OF 2014

(ARISING FROM SOROTI CHIEF MAGISTRATE’S COURT CIVIL APPEAL NO. 6 OF 2008, ARISING FROM SOROTI SUB-COUNTY LC III COURT).

ABIRO MARGRET.....APPLICANT

VS.

ESWAGU WILLIAM.....RESPONDENT

RULING

BEFORE HON. LADY JUSTICE H. WOLAYO

The appellant through her advocates Isodo & Co. advocates filed a revision application under section 83 of the CPA and order 52 rules 1& 3 of the CPR.

The grounds for which revision orders are sought are:

1. The learned Chief Magistrate failed to perform his supervisory role over Local Council courts when he upheld a decision reached by a court of incompetent jurisdiction.
2. The decision of the lower court occasioned a miscarriage of justice.

The respondent who was represented by Echipu & Co. Advocates filed an affidavit in reply.

Both counsel filed written submissions that I have carefully considered.

I have also considered the affidavit in support to the Notice of Motion, affidavit in reply and the handwritten but legible lower court records.

The possible grounds for revision as stipulated in section 83 of the CPA 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 exercised jurisdiction but with material irregularity.

It is not in dispute that the case started in the LCII court of Amen parish and went on appeal to the LC III court of Soroti sub-county. The LC III court visited the locus and recorded testimonies of witnesses. The current applicant Margret Abiro was the appellant in the LC III court that determined the appeal against her hence her appeal to the Chief Magistrate's court Soroti.

The grounds of appeal in the CM court were

1. The LC III court erred when it heard the appeal as if it was a fresh case.
2. The LC III Court erred in visiting the locus.

The Chief magistrate considered section 32(1) (b) of the Local Council Courts Act that confers appellate jurisdiction on the LC III Court. The CM also considered section 34 of the same Act that permits the LC III court to call witnesses and additional evidence just like any appellate court is empowered. The CM also made reference to regulation 65(5) of the Local Council regulations that fortified section 34 of the Act by empowering LC III court to call witnesses if it is satisfied that the case was badly handled in the lower courts.

The CM proceeded to dismiss the appeal on the ground that the LC court had power to call witnesses on appeal and record evidence afresh.

I entirely agree with the decision of the chief magistrate not to fault the procedure adopted by the LC III court.

As this is not an appeal, i need not re-evaluate the evidence in the lower court.

Suffice it to say that the CM acted within jurisdiction, exercised it with diligence and generated a decision that was within the law.

Counsel for the applicant alluded to failure of the CM in not supervising the LC II court of Amen. I am in agreement with Mr. Echipu that supervisory powers are invoked when the LC court is still seized of the case and not later. In any case, the applicant never complained to the CM during the trial in the LC II court that she was not happy with the way the Court was conducting the proceedings.

Accordingly, I find no merit in this application for revision and it is dismissed with costs to the respondent here and in the chief magistrate's court.

DATED AT SOROTI THIS 17th DAY OF MARCH 2015.

HON. LADY JUSTICE H. WOLAYO