

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

HCT-04-CV-MA-0128-2013

**(FROM MBALE CMS SUPERVISOR DECISION DIRECTING KASYERU
LC.I COURT TO CARRY OUT EXECUTION)
ALL ARISING FROM KASYERU LC.I COURT DECISION OF 2007)**

WAMBEWO SIMON.....APPLICANT

VERSUS

MAZELELE SILVESTER.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

RULING

Applicant brought this application by Notice of Motion under Section 82 and 98 of the Civil Procedure Act.

The application is for review of HCMA No. 171/2011 six grounds were listed as below.

- a) There is new and important evidence which could not be produced at the time the ruling of HCMA No. 171/2011 were made that there was a constitutional petition that declared the existence of LC.I Committees null and void.
- b) That the Local Council Committee of Kasyeru village received, heard and determined the land case in issue herein when its mandate had expired and thereby making their judgment null and void and unenforceable.
- c) The land in dispute is a family, matrimonial land which cannot be attached.
- d) That the matter was not fairly concluded.
- e) Application is in the interest of justice.

The brief history is that on the 15th January 2007 Respondent filed a suit against applicant in the LC.I Court of Kasyeru village which was determined exparte; against the applicant. Applicant lodged a complaint before the Chief Magistrate Mbale who advised the LC.I Court that it did not have jurisdiction to handle the matter and advised the respondent to file a fresh suit in Sironko Court which was done. The suit was dismissed for non appearance of the Respondent. Respondent

again moved the new Chief Magistrate who directed the LC.I Court to execute their judgment and orders.

Applicant then applied to High Court for revision, which application was dismissed. Applicant then applied for review of the High Court Ruling on grounds that by virtue of the holding in the case of Rubaramira Ruranga v. Electoral Commission and Others Const. Pet. 21/2006, the LC.I Court had no jurisdiction to hear the matter.

In reply the respondent argued in his affidavit that notwithstanding the decision by the constitutional Court above, the judgment of Kasyeru LC.I Court is valid and was made within its mandated time, and was enforceable.

The above facts are the basis of this application for review.

I have gone through the entire record and have found that according to Annex 'B' which is the judgment and proceedings of the LC.I Court, the proceedings commenced on 15th January 2007. It is not clear when the same was concluded because the judgment is not dated though the same was certified on 20.2.2012.

The same date of 20.2.2012 for certification appears on the proceedings signed for 15.01.2007.

Also on record the supplied judgment annex 'D' of Rubaramira Ruranga v. Electoral Commission & A.G, Constitutional Petition 21 of 2006, was delivered on 3rd April 2007.

The above position shows that the LC.I Court began hearing the matter before the Supreme Court Ruling above became operational law. The Hon. Court in the Revision Ruling, pointed out that, under Regulation 32 of Section 11 of the Local Council Act; LCs had jurisdiction by then to handle land disputes under customary tenure. This finding was a good finding as per the time of the LC Court judgment which was around January 2007. The Ruling that declared the LC Courts unconstitutional was delivered on 3rd April 2006. The laws that govern legislation and statutory interpretation are to the effect that laws should never have retrospective, enforcement. In my view, even if this case had been drawn to the attention of the High Court Judge at time of his Revision, he would still have reached the same conclusion since the decision came into being after the LC Court had exercised its jurisdiction.

For reasons above I do not find justification for this court to invoke its power of review as prayed. This application is therefore not granted for being incompetent. It is dismissed. Each party should bear their own costs.

Henry I. Kawesa

JUDGE

12.02.2015