

2. Both the LCII Court and LCIII Courts irregularly and illegally exercised the jurisdiction vested in them when they entertained a dispute for registered land comprised in Buddu Block 876 Plot 29;
3. The Courts irregularly and illegally exercised the jurisdiction vested in them when they failed to give the Applicant a fair hearing;
4. The Courts heard and determined the case with no record of proceedings and therefore judgments were full of conjecture and opinions of the committee members and thus irregular and illegal;

In her affidavit in reply, the Respondent Nakato Bena opposed the application and averred that the Applicant was not condemned unheard as he attended the court proceedings at LC levels. The Respondent applied for execution of her judgment from the LC III Court to the Chief Magistrate and she was referred to the LCII Court which also decided in her favor.

The Respondent further challenged the Application for being brought under the wrong procedure and that the instances where revision can be exercised are not present in this case.

Both Parties filed written submissions.

Counsel for the Applicant raised two issues for the determination of this court;

1. Whether the LCIII Court of Kyebe Sub county, Kyotera District exercised jurisdiction not vested in it by law;
2. Whether the LCII Court of Kibumba Parish in Kyotera District failed to properly exercise a jurisdiction so vested when it failed to grant to the Applicant a fair hearing or that the LC III Court acted in the exercise of her jurisdiction or with material irregularity or injustice.

Counsel for the Applicant cited *Section 11 of the Local Council Courts Act of 2006* which is to the effect that every suit shall be instituted in the first instance in a village local council court if that court has jurisdiction in the matter within the area. Counsel further relied on *Section 76 A (1) of the Land Amendment Act, 2004* which gave jurisdiction to LC2

Courts as courts of first instance. Counsel argued that in the instant case, the LCIII court was the court of first instance and the Chief Magistrates court issued a notice to show cause why execution should not issue on the basis of its judgment. It is Counsel's argument that this was illegal, null and void and court should find as such.

Regarding the second issue, Counsel submitted that the LCII Court did not entertain he Applicant nor give him a fair hearing and the locus visit was held without his knowledge which was a gross violation of the Applicant's right to fair hearing. Counsel prayed for this court to find that the LCIII Court exercised jurisdiction not vested in it and that the LCII Court acted with material irregularity and injustice and accordingly the decisions of the courts should be set aside or vacated.

Counsel for the Respondent submitted that the judgment of the LCIII court was nullified by the Chief Magistrate by letter dated 9th March, 2020 and what is left to be considered is the decision of the LCII Court. Counsel argued that the Applicant was informed of the hearing in the LCII Court and the judgment of the court is concise and reasoned. Counsel relied on the case of *Paul Kiraza Vs Musa Sekeba CA No. 58 of 2012* on the evaluation of evidence and submitted that the LCII Committee reached a proper decision after analyzing the evidence and prayed for the application to be dismissed.

Determination by court;

Black's Law dictionary (9th edition) defines *revision* as a re-examination or careful review for correction or improvement or an altered version of work.

Section 83 of the Civil Procedure Act gives the High Court revisionary jurisdiction over decisions of Magistrate's courts. It provides that, "*The High court may call for the record of any case which has been determined under this Act by any Magistrate's court and if that court appears to have;*

- a. *Exercised a jurisdiction not vested in it in law*
- b. *Failed to exercise a Jurisdiction so vested*

- c. *Acted in the exercise of its jurisdiction illegally or with material irregularity or injustice,*

The High court may revise the case and may make such order in it as it thinks fit.....”

The Applicant’s argument is that the LCIII court did not have jurisdiction to handle the instant case as a court of first instance.

Section 76A of the Land Amendment Act No. 1 of 2004 which was amended by ***Section 30 of the Land (amendment) Act 2004*** provides for modification of Cap 8.

Subsection 1 of section 76A provides that;

Notwithstanding the provisions of Section 5,7 and 29 of the Executive Committees (Judicial Powers) Act, the Parish or the Executive Committee Courts shall be the court of first instance in respect of Land disputes. This provision gives the Parish Executive Committee Courts which are the Local Council Two (LC II) Courts jurisdiction to handle land disputes.

I have carefully perused the record of the lower courts and established that on the 9th day of March, the Chief Magistrate Ssejjemba Deo John wrote a letter to the Chairman LCIII Court addressing the matters of the instant case and addressed the jurisdiction of the LCIII Court. His direction was that the decision of the LCIII was nullified and proceedings cancelled and the Respondent herein was advised to file a fresh case in the LCII Court.

There is a decision of the LCII Court of Kibumba Parish dated the 8th day of May 2020 and this is the same decision that was subject of the Notice to Show Cause by the Chief Magistrate as per the notice dated 26th June, 2020.

The direction of the trial Magistrate and the Notice to show cause clearly shows that the decision of the LCIII Court was nullified and was not considered by the Chief Magistrate’s Court. Counsel for the Applicant’s submission that the judgment of the trial Magistrate was based on the decision of the LCIII Court is therefore misconstrued.

Following the above evaluation and consideration of the records of the lower court, it is my carefully considered opinion that the argument relating to the LCIII Court decision is misconceived in the instant case. There is no decision to revise in as far as the LCIII Court is concerned. I am in agreement with Counsel for the Respondent that the only decision to consider in the instant case is the decision of the LCII Court.

The trial Magistrate issued a notice to show cause for the decision of the LCII Court. I have perused the decision of the LCII Court and a decree for its execution was issued on the 25th day of August 2020.

In the case of *Maguzi Grace Patrick Vs Ntungamo Local Government Mbarara High Court HCT-05-CV-CR-0032 of 2011*, the Hon. Justice Bashaija K. Andrew held at page 7 of the Judgment that; *“a court is said to exercise jurisdiction illegally or with material irregularity when such a court is seized with jurisdiction but wrongly through some procedural or evidential defect”*

Revisionary powers are limited to exercise of jurisdiction and not the decision of the court as that would be a ground for appeal.

I have already established that the LCII Court had jurisdiction to try the instant matter as the court of first instance which it did following the direction of the Chief Magistrate.

On the issue of the court exercising its jurisdiction with material irregularity or evidential defect, according to their pleadings, both parties agreed that the LCII Court decided to take evidence of the Parties by documentary evidence considering the circumstances of the period of the Covid19 Pandemic. In his affidavit in support of the Application, the Applicant states that on the 3rd May 2020, he was summoned to appear for hearing on the 6th day of May 2020 and the court requested parties to leave documentary evidence pertaining to the disputed land.

I have not had the opportunity to peruse the record but I have considered the decision of the court and this being an LCII Court, I have to bear in mind the normal procedure of the court

regarding recording proceedings. The decision of the LC II Court is detailed as to the evidence relied on in the instant case and both Parties' evidence was considered before reaching the final decision.

In the case of *Maguzi Grace (cited above), the learned judge relied on the case of Matembe Vs Yamuringa [1968] EA 643*, in which it was held that the provisions of section 83 of the Uganda Civil Procedure Act apply to jurisdiction alone, the irregular exercise of or non-exercise of it or the illegal assumption of it. That the section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. That where a court has jurisdiction to determine a question and determines that question, it cannot be said that has acted illegally or with material irregularity merely because it has come to an erroneous decision on a question of fact or even law. That it would appear that injustice or irregularity other than in exercise of jurisdiction must be remedied by appeal rather than revision.

In the case of *Matembe Vs Yamuringa [1968] E.A 643, Muhindo Stephen Vs Mbafu German HCT-CV-CR-No. 006 of 2009, Nadiope & 8 Ors Vs Maluku Development Association Ltd HCT-04-CV-MA-073 of 2010* Hon. Justice Stephen Musota held;

“For a matter to qualify for revision, it must be apparent or show that it involves a non-exercise or irregular exercise of jurisdiction. Revision does not concern itself with conclusions of law or fact in which the question of jurisdiction is not involved. Dissatisfaction with a decision by a court with jurisdiction in favour of the other party cannot be a matter of revision.”

The Applicant seeks to challenge the process of taking evidence and holding locus without his knowledge. These are not grounds of revision as they do not relate to exercise of jurisdiction.

I also find no reason to challenge the trial Magistrate's jurisdiction in ordering the execution of the decision of the LCII Court. There is no apparent evidence that the trial Magistrate did not have jurisdiction to order the execution of the decision of the LCII Court.

The Applicant has no merit in challenging the decision of the LCIII Court and has further failed to prove that there was any illegal exercise of jurisdiction or material irregularity in exercise of jurisdiction by either the LCII Court of the Chief Magistrate's Court.

This application therefore bears no merit and is hereby dismissed with costs to the Respondent.

I so order.

Dated at Masaka this 5th day of November, 2021

Signed; _____



Victoria Nakintu Nkwanga Katamba

Judge