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The Republic of Uganda

In The High Court of Uganda at Soroti

Miscellaneous Application No. 0140 OF 2022

(Arising from the judgment passed by Kamailuk L.C II Court dated 15th January 2022 and by L.C III Kangole Sub County Court dated 6th September 2022)

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Isoto Angella :: Applicant

Versus

Atai Elizabeth :: Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

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Ruling:

1. Background:

This is an application brought by way of Notice of motion under section 83 (a), section 98 Civil Procedure Act, Order 52 rule 1 of the Civil Procedure Rules, sections 14(2) (b) & (d), section 33 of the Judicature Act and section 40 of the Local Council Courts Act 2006 for orders that the
20 judgements/orders of the Kamailuk L.C II Court dated 15th January 2022 and by the Kangole Sub County L.C III Court dated 6th September 2022 be revised and or set aside and costs of this application be borne by the respondent.

25 The grounds of this application as set out in the application and supporting affidavit are briefly that the Kamailuk L.C II Court did not have original jurisdiction to entertain the matter as a court of first instance, the L.C III Court of Kangole did not have jurisdiction to hear the matter afresh and as such both courts misdirected themselves on hearing the matter as

5 courts of first instance and the decisions reached are illegal, null and void.
That the two courts had the matter and delivered their judgments without
the prerequisite statutory quorum.

The respondent in reply stated that the LC II rightly evaluated the
evidence and arrived at a right decision and it's the applicant who did not
10 abide by this decision leading to the matter being referred to the LC III
Court which passed its own decision by upholding the decision of the LC
II Court based on the record and other new evidence which was availed by
the respondent. That the L.C II and L.C III Courts have jurisdiction as
courts of first instance to entertain the matters concerned with disputes
15 over customary land and they can arrive at binding decisions that either
be appealed or reversed and that the two courts followed the right
procedure and constituted the right quorum while presiding over the
matter.

2. Submissions:

20 M/s Ssekabanja & Co. Advocates counsel for the applicant submitted on
two issues;

a) Whether the L.C II and L.C III Courts had jurisdiction to hear the
matters as Courts of first instance?

25 b) Whether the decision and judgment of the L.C II and L.C III Courts
can be set aside?

On the first issue Counsel submitted that it is settled law that jurisdiction
is a creature of statute and no court can confer jurisdiction upon itself
unless it is established by statute. If proceedings are conducted by court
without jurisdiction, they are a nullity. Any award or judgment and or
30 orders arising from such proceedings of a court acting without jurisdiction
are also a nullity.

5 Counsel relied on ***Wadri Mathias & 4 Ors vs Dranila Angella Civil Revision No.07/2019.***

Counsel further submitted that the jurisdiction of the Local Council Courts is provided under the Local Council Courts Act of 2006 under section 10 and 11 and Regulation 32 of the Local Council Courts
10 Regulations.

Basing on these provisions and the holding in ***Mutonyi Margaret Wakyala & Ors v Tito Wakyala & Ors [2011] UGHC 117***, counsel submitted that both the LC II court had no jurisdiction to hear the matter in first instance and the LC III Court had no jurisdiction to hear the matter
15 afresh.

Regarding the second issue counsel submitted that first the LC II and LC III Courts did not meet the prerequisite quorum as envisioned under section 8 (4) and (5) of the Local Council Courts Act.

That the LC II and LC III Courts per the proceedings and judgment were
20 only constituted of men with no woman. He stated that since the decisions in both courts were made without the prerequisite statutory quorum their decisions are null and void.

Secondly, counsel submitted that the court did not consider the issue of limitation yet the same was contemplated in the testimonies of the various
25 witnesses.

Counsel stated that the respondent brought her claim for recovery of land against the applicant which claims the applicant denied contending that she had lived on the land for over 30 years since 1989, however, the respective courts could not address this issue and make a finding.

30 Counsel relied on section 5 of the Limitation Act and ***John Otiamong Vs Mohammed Olinga [1985] HCB 86*** as cited in ***Wabul and Anor***

5 ***Vs Kiyonga Ddunda and 2 Ors CS No. 102 of 2009, Hammerman Ltd and Anor vs Ham Ssali and Anor MA No. 449 of 2013 and Mohammed B Kasasa vs Jaspher Buyonga Sirasi Bwogi CACA No. 42 of 2008*** in his submissions.

10 Thirdly counsel submitted that the court ignored the fact that the respondent had sued a wrong party as pointed out by the applicant.

Counsel, finally submitted that from the above glaring errors and failure to apply and properly address the issues on points of law, this is a proper case where in the interest of justice the judgments in the LC II and LC III Courts should be set aside and the matter be referred to a competent court
15 for exhaustive determination of the parties' rights.

In reply, M/s Xander Advocates for the respondent, submitted the contention of the applicant that the LC II and LC III courts do not have jurisdiction to hear the matter as courts of first instance is a misdirection as section 9 of the Local Council Courts Act provides that subject to the
20 provisions of the Act and any other written law, the jurisdiction of the Local Council Court shall extend only to causes and matters arising within the territorial area of the Council for which the court is established and to causes or matters arising elsewhere if the defendant or accused ordinarily reside within that area.

25 That in the instant case the LC II Court of Kamailuk is within the territorial jurisdiction of both the respondent and the applicant and could hear the matter.

Counsel further submitted that under section 10 of the Local Council Courts Act, the LC II Court had original jurisdiction to hear the matters of
30 civil nature relating to customary law.

5 Counsel further submitted in *Kintu v Nsubuga Cause No. 14 of 2016*, it was discussed that it's not the merits of the decisions by the lower courts but jurisdiction and constitution of the court that are in issue and court agreed that by September 2012 no LC I or LC II Committees Courts were legally in place.

10 He continued to submit that after the elections of the Local Council members of 2018, these courts became constituted and their operations became effective and their decisions binding.

With regard to the second issue counsel submitted that court should not be used to against its own decisions and this does not grow the
15 jurisprudence in the legal framework.

Counsel stated that the LC II and LC III Courts met the pre-requisite quorum per section 8(4) and (5) of the Local Council Court's Act as they constituted 5 members with one woman. Secondly that the court considered the limitation period since the applicant entered into physical
20 possession of the land in 2017.

3. Determination:

The law governing Local Council Courts is essentially the Local Council Courts Act and its Regulations. Section 8 of the Local Council Courts Act provides for sitting of the court and specifically subsection 4 and 5 provide
25 that;

(4) The quorum of the court at any sitting shall be—

(a) in the case of a village or parish, five members including the person presiding, two of whom shall be women; and

**(b) in the case of a town, division or sub-county, three members
30 including the person presiding, one of whom shall be a woman;**

5 **(5) The quorum shall be maintained throughout the court sitting.**

With regard to jurisdiction, section 9 provides for territorial jurisdiction of the LC Courts to be limited to causes and matters arising within the territorial area of the council for which the court is established and to
10 causes and matters arising elsewhere if the defendant or accused is ordinarily resident within that area.

Section 10 provides for the courts legal jurisdiction; it states that;

**(1) Subject to the provisions of this Act and of any other written law, every local council court shall have jurisdiction for the trial
15 and determination of—**

(a) causes and matters of a civil nature specified in the Second Schedule to this Act;

(b) causes and matters of a civil nature governed only by customary law specified in the Third Schedule;

20 **(c) causes and matters arising out of infringement of bye-laws and Ordinances duly made under the Local Governments Act;**

(d) matters specified under the Children Act;

(e) matters relating to land.

**(2) In any suit relating to causes and matters specified in the
25 Second and Third Schedules—**

**(a) the jurisdiction of the local council court shall, in respect of causes and matters specified in the Second Schedule be restricted to causes and matters where the value of the subject matter in dispute does not exceed one hundred currency
30 points;**

5 **(b) the jurisdiction of the court in respect of causes and matters specified in the Third Schedule shall not be restricted by the monetary value of the subject matter in dispute.**

Section 11 provides for where suits in Local Council Courts may be instituted. It states that

10 **(1) 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 of whose jurisdiction—**

(a) the defendant actually resides at the time of the commencement of the suit; or

15 **(b) where the cause of action in whole or in part arises; or (c) in the case of a dispute over immovable property, where the property is situated.**

**(2) Subject to this Act, every suit shall be received by the Chairperson and in the absence of the Chairperson, by the Vice-
20 Chairperson.**

Regulation 33 of the Local Council Courts Regulations amplifies the above provision.

The above provision of the law s clearly shows that neither the LC II Court nor the LC III Court have original jurisdiction as the Local Council Courts
25 Act and it Regulations require that all suit be filed in the Village Local Council Court as a court of first instance.

This position is reinforced by Section 32 of the Local Council Courts Act which provides for appeals, subsection 1 and 2 specifically state thus;

30 **(1) A party dissatisfied with the judgment or order of a local council court may, subject to the provisions of this section or**

5 any written law, appeal against the judgment or order; but no appeal shall lie from a judgment or order passed or made as a result of the consent of the parties.

(2) An appeal shall lie—

(a) from the judgment and orders of a village local council court
10 to a parish local council court;

(b) from the judgment and orders of a parish local council court, to a town, division or sub county council court;

(c) from the judgment and orders of a town, division or sub-
county local council court to a court presided over by a Chief
15 Magistrate; (d) from decrees and orders made on appeal by a
Chief Magistrate, with the leave of the Chief Magistrate or of the
High Court, to the High Court.

The above section indicates a clear path for a case instituted in a Local
Council Court to follow with an appeal starting from judgments and orders
20 of the Village Local Council Court. The LC II, LC III derive their appellate
Jurisdiction from here and can only have original jurisdiction if the Village
Court does have the same.

In the instant case the matter filed before the LC II Court by the
Respondent was for recovery of land which was governed by customary
25 law.

Under section 10 (1) (b) and (2) (b), the matter brought by the respondent
was a matter that only the Village Local Council Court could hear on first
instance.

The above provisions of the law provide that matters and causes of civil
30 **customary nature as stated in the third schedule to the Act shall**

5 not be restricted by monetary jurisdiction and as such a Village Local Council Court maintains original jurisdiction in such matters.

Arising from the above clear provisions of the law, I would accordingly find that the LC II Court of Kamailuk had no jurisdiction to hear the matter between the parties. Likewise, neither did the LC III Court of
10 Kangole have jurisdiction to hear the matter afresh. The proceedings and resultant decisions are accordingly null and void.

Counsel for the applicant in his submissions made reference to ***Mutonyi Margaret Wakyala & Ors v Tito Wakyala & Ors [2011] UGHC 117*** in which Justice Stephen Musota while deciding on similar matters
15 considered the provisions of the Local Council Courts Act *vis-a-vis* S.76A of the Land Amendment Act 2004 which gave the LC. II Courts power to handle land matters as courts of first instance. He found that;

***“There appear to be concurrent jurisdiction in land matters given to both the LC II Courts under the Land
20 Amendment Act and LC I Courts under the Local Council Act because the latter Act did not expressly repeal the former.***

S.10 (1) of the LCCA commences thus: -

***“(1) Subject to the provisions of this Act and of any other
25 written law every local council court shall have jurisdiction for the trial and determination of matters relating to land.”***

***One may argue that S.76 A of the Land Act is “any other written law” which is still in force since it was not
30 specifically repealed by the LCCA which is a later statute but this is likely to cause confusion and absurdities in***

5 *view of the third schedule to the LCCA which gives Local
Council Courts jurisdiction to handle civil disputes
governed by customary law and disputes in respect of
land. The LCCA goes ahead to provide that such disputes
10 have to commence in the lowest council court which is a
village court as per S.11 of the LCCA amplified by
Regulation 32 of the Local Council Courts Regulations
(supra).*

15 *It is my considered view that this absurdity can be
resolved by applying the principles of statutory
interpretation and rules which govern legislative
drafting.*

20 *It is trite law that where an earlier statute is in conflict
with a later one, the later statute prevails. This is a
conclusion based on the assumption that the Legislature
keeps abreast with the needs of the time and is wiser as
time passes. Uganda Revenue Authority v. Uganda
Electricity Board HCT-CA-001-2006.*

25 *In Re Williams (1887) 36 Ch. D 537 at 578 held,
“And it appears to be a Constitutional necessity as well as
an established rule of construction that the last
utterances of the legislature should prevail over earlier
statutes inconsistent with it.”*

30 *I will add that the Legislature cannot be assumed to have
made a mistake when it enacted the Local Council Courts
Act which is the later statute while an earlier Land
Amendment Act which it had passed was still in force.*

5 **To justify this reasoning I will refer to the case of *Income Tax v. Pemal (1891) A.C. 531 at 549 followed in Supreme Court Civil Appeal 1 of 1989 the Attorney General V. Silver Springs Hotel Ltd and 9 Others. Lord Halsbury said:***

10 ***“But I do not think it competent for any court to proceed upon the assumption that the Legislature has made a mistake whatever the real fact may be, I think a Court of Law is bound to proceed on the assumption that the legislature is an ideal person that does not make a mistake.”***

15 ***The Land (Amendment) Act No.1 of 2004 did allow the LC. II Court to handle matters concerning land disputes as a court of first instance removing jurisdiction from the LC. I Court. However, by virtue of S.11 of the LCCA No.13 of 2006 this matter was revisited by the Legislature and as***
20 ***of now jurisdiction was restored to the LC. I Court. Suits have to be commenced in the LC. I court as a court of first instance. While there is no express repeal of the powers of the LC. II Courts under the Land Act in the LCCA, there is implicit or implied repeal thereof rendering the powers***
25 ***of LC. II Courts stale which cannot be enforced by any court of law.***

Several well-known principles of construction support my conclusion.

30 ***In Legislative Drafting and Forms 4th Edition at P.51 Sir Alison Russell K.C points out that: -***

5 ***“The general presumption is against such a repeal on the
ground that the intention to repeal if any had existed,
would be declared in express terms; but it is not
necessary that any express reference be made to the
statute which is to be repealed. The prior Act would be
10 repealed by implication --***

***(a) If its provision were wholly incompatible
with the subsequent Act, or***

***(b) If the two Acts together would lead to
wholly absurd consequences, or***

15 ***(c) If the entire subject matter were taken
away by the subsequent Act.”***

***Therefore, the LCCA which is a later statute repealed
S.76A of the Land Act by implication thus removing
powers from the LC. II Courts acting as court of first
20 instance in land matters. It also completely reformed the
appeal process in land matters as provided for under S.32
of the LCCA.”***

Accordingly, the learned judge went on to hold that the LC. II Courts no longer have jurisdiction in land matters as courts of first instance.

25 I agree and associate myself with the position taken by Justice Stephen Musota as above for according to me it clarifies on the jurisdiction of LC courts in relations to the trial of land matters with LC1 court clearly provided for as the court of first instance.

30 The Land Amendment Act inadvertently purports to change the status above in spite the specificity of the law which governs the operations and jurisdiction of LC courts generally and within which there is clearly

5 provided in its schedule matters which the LC courts can handle which in my considered, view is the appropriate and an unambiguous law.

Accordingly, I would surmise that given the clear law governing the structure and jurisdiction of LC courts as discussed above, the LC II at Kamailuk had no Jurisdiction to hear the matter between the parties as a
10 court of first instance since jurisdiction is a creature of statute and so the proceedings conducted by that court which had no jurisdiction results into a nullity and consequently its judgment is also a nullity. And so is that of LC III Court Kangole.

Having found that the LC II Court Kamailuk and the LC III Court Kangole
15 had no jurisdiction to hear the matter I see no reason to determine issues relating to the quorum during the proceedings and issues of limitation as submitted by counsel for the applicant. This application is accordingly would succeed with the following orders granted;

4. Orders:

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- The proceedings and judgments from LC II Court Kamailuk and LC III Court Kangole are set aside for lack of jurisdiction.
 - The parties may proceed to file the matter in the court of competent jurisdiction if they so wish.
 - Costs of this application is awarded to the applicant.

25 I would so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

2nd March 2023