

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ARUA

CIVIL REVISION No. 0003 OF 2015

**(Arising out of the judgment and decree of the Chief Magistrate at Arua given on
20th March 2015 in C.A. No. 0012 of 2013)**

DUDU FATAKI APPLICANT

VERSUS

MWALIMU JUMA SULEIMAN OBA RESPONDENT

Before: Hon Justice Stephen Mubiru.

RULING

This application arises from the judgment of His Worship Angualia Moses Gabriel, Chief Magistrate of Arua, in civil Appeal No. 0012 of 2013, given on 20th March 2015, by which he reversed the decision of the Dadamu Sub-county L.C. III Court, thereby restoring ownership of a disputed forest land to the respondent and declaring the boundary between the applicant and the respondent's land. He also awarded the respondent one third of the costs of the proceedings on appeal.

The applicant seeks a revision of that decision and an order for a re-trial on ground that the Learned Chief Magistrate failed to exercise a jurisdiction vested in him by law, that he acted in exercise of his jurisdiction with illegality and material irregularity, and that it is just and equitable that the decision be revised. On his part, the respondent was non committal on the application. In his affidavit in reply, he is in part opposed to the application and in part expresses dissatisfaction with the decision of the chief magistrate on account of having given away some of his land to the applicant. This ambivalence was apparent too in the submissions of his counsel.

The background to the impugned judgment is that both the applicant and the respondent are residents of Orionzi Village, Ariwala Parish, Dadamu Sub-county in Ayivu County where they own adjoining tracts of land. Sometime during the year 2013, a dispute sprung out between them regarding ownership of a part of this land as a result, partly, of failing to agree on the location of the boundary between their respective tracts of land.

What happened thereafter is disputed. According to the respondent, in paragraphs 3 and 4 of his affidavit in reply, there was a meeting convened by the L.C.I Committee of Orionzi Village on 24th March 2013 to determine whether the land the applicant intended to lease actually belonged to him. At that meeting it was established that it belonged to the respondent. On his part, the applicant in paragraph 3 of his affidavit in support of the motion refers to that meeting as one that was convened to settle the dispute between his family and that of the respondent over ownership of the land and that the Committee decided in favour of the applicant's family.

According to the respondent, the applicant being dissatisfied with the finding of the L.C.I Committee of Orionzi Village at its meeting of 24th March 2013, he filed a suit before the L.C.II court of Ariwala Parish which decided in favour of the applicant on 25.03.2013. The applicant instead attributes the proceedings before the L.C.II court to the respondent (see paragraph 4 of his affidavit) as the person who initiated them. Both parties agree though that it is the respondent who appealed that decision to the L.C.III Court at Dadamu by which the disputed land was shared between the two disputants in its decision of 27.07.2013. The respondent appealed further to the Chief Magistrates court, which then delivered the impugned judgment.

Although the parties disagree on the nature and result of the meeting convened by the Orionzi Village L.C. I Committee on 24th March 2013, what is not in doubt is that those proceedings were not of a judicial nature. Furthermore, although the parties are divergent as regards who initiated the proceedings before the L.C.II Court, what is not disputed and therefore not in doubt is that it is before that court that the dispute between the parties was first subjected to a judicial process. The record of proceedings of that court (annexure "B" to the affidavit in support of the motion) indicates that the court proceeded as a court of first instance by taking viva voce evidence of both plaintiff's and defendant's witnesses. The record of proceedings does not in any

way make reference to proceedings before the L.C.I. sitting as a court or at all. I therefore find as a fact that the L.C.II court in adjudicating this dispute sat as a court of first instance.

The respondent in this application was the appellant before the Chief magistrate. The thrust of his appeal was that Dadamu Sub-county L.C.III court erred in entertaining the case as a court of first instance, that it failed to properly evaluate the evidence and in delivering its judgment and making orders without jurisdiction. The learned Chief Magistrate dismissed the first and third grounds, and rightly so, having found that the Dadamu Sub-county L.C.III court acted in exercise of its appellate jurisdiction, but decided in favour of the respondent on the second ground holding that; “I find that the L.C.III appellate Court failed to properly evaluate the evidence before it thereby resulting in a miscarriage of justice...” This is the decision that the applicant now challenges as having been arrived at as a consequence of the Chief Magistrate’s failure to exercise a jurisdiction vested in him by law, and by acting in exercise of his jurisdiction with illegality and material irregularity.

At the hearing of the application, counsel for the applicant, Mr. Kangaho Edward, singled out the Chief Magistrate Magistrate’s failure to fault the Dadamu Sub-county L.C.III court’s assumption of appellate jurisdiction over a matter that began in the Ariwala Parish L.C.II as a court of first instance, contrary to the provisions of the *Local Council Courts Act, 2006*, as a failure to exercise a jurisdiction that was vested in him and as an exercise of his jurisdiction with illegality and material irregularity. He cited *Mutonyi Margaret Wakyala and Others v Tito Wakyala and Others; Mbale H.C.C. C.Rev No. 0007 of 2011*. In response, learned counsel for the respondent, Mr. Samuel Ondama, argued that the learned Chief Magistrate was justified in coming to the conclusion that he did, but in the alternative, stated that the respondent would be contended with whatever decision the court comes up with provided the costs are not awarded to the applicant since the respondent was not responsible for the decision the court came up with.

The Local Council Courts’ jurisdiction over matters relating to land is conferred by section 10 (1) (e) of the *Local Council Courts Act, 2006*, whereby every local council court has jurisdiction for the trial and determination of land matters, subject to the provisions of the Act and of any other written law. According to section 10 (2) (b) of the Act, the jurisdiction of these courts in respect of causes and matters specified in the Third Schedule is not restricted by the monetary

value of the subject matter in dispute. The Third Schedule of the Act lists civil disputes governed by customary law, triable by Local Council Courts and under item (a) of the schedule, jurisdiction is conferred over disputes in respect of land held under customary tenure.

The land in dispute being held under customary tenure, it was proper to find that the dispute was triable by the Local Council Courts. However, section 11 of the *Local Council Courts Act, 2006* provides for the forum where suits are to be instituted, thus:-

“(1) Every suit shall be instituted in the first instance in a village local council court if that court has jurisdiction in the matter.....”

(c) in the case of a dispute over immovable property, where the property is situated

Section 32 of the same Act creates appellate jurisdiction and in respect of Parish Local Council Courts provides as follows;

2) An appeal shall lie—

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

By that provision, L.C.II Courts have appellate jurisdiction only. It is trite law that the jurisdiction of courts is a creature of statute. A court cannot exercise a jurisdiction that is not conferred upon it by law. Therefore, whatever a court purports to do without jurisdiction is a nullity *ab initio*. It is settled law that a judgment of a court without jurisdiction is a nullity and a person affected by it is entitled to have it set aside *ex debito iudiciali* (See *Karoli Mubiru and 21 Others v Edmond Kayiwa [1979] HCB 212; Peter Mugoya v James Gidudu and another [1991] HCB 63*). Where a trial court has not exercised its original jurisdiction over a matter, there certainly cannot arise a valid appeal on the merits. All subsequent appellate proceedings lack the foundation and legitimacy of a preceding trial and cannot stand on their own.

In the proceedings before me, it is clear that the appeal to the Chief Magistrate was restricted to the lawfulness and propriety of the proceedings and judgment of the Dadamu Sub-county L.C.III court. The lawfulness or otherwise of the proceedings and judgment of the Ariwala Parish L.C.II court were apparently not questioned by the appellant (now the respondent in this application).

One would understand why the Chief Magistrate proceeded to decide the appeal on basis of the narrow grounds raised and argued by the parties.

However, this was a first appeal to a court of judicature arising out of proceedings conducted under the Local Council Court system, comprising courts mainly constituted by lay persons and before which advocates have no right of audience. The likelihood of irregularities in their proceedings is heightened by the very nature of their composition. It would be prudent of a Chief Magistrate's Court considering an appeal from an L.C.III Court, and I dare say a legal duty incumbent on the court, to proceed like a first appellate court would. When parties appeal to a Chief Magistrate from the L.C.III Courts, they are entitled to a fresh and exhaustive scrutiny of the proceedings right from the court of first instance up until the appeal before the Chief Magistrate. I am buttressed in this view by section 40 of the *Local Council Courts Act, 2006* which imposes upon Chief Magistrates, a supervisory role to be exercised over local council courts on behalf of the High Court, with such general powers of supervision as are conferred on the High Court over Magistrates' Courts. The chief magistrate ought to have subjected the entire record of proceedings of the L.C Courts to a fresh and exhaustive scrutiny. Had he done so, he would have discovered the illegality in the underlying proceedings. He therefore failed to exercise a jurisdiction vested in him and proceeded with material irregularity.

I accordingly find that the learned chief magistrate erred when he based his decision on defective proceedings of the L.C.III court which considered an appeal from the decision of an L.II Court acting as a court of first instance. I therefore substitute the orders of the chief magistrate with an order quashing and setting aside the proceedings and judgment of Dadamu Sub-county L.C.III court, on ground that the case ought to have commenced in the LCI court of Orionzi Village and not the L.C.II court of Ariwala Parish. In light of the current doubtful legal status of L.C. Courts, I order a re-trial before a magistrate's court with competent jurisdiction to try the case. In the circumstances, the costs of this application will abide the result of the re-trial. I so order.

Dated at Arua this 14th day of July, 2016.

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Stephen Mubiru

Judge.