

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CIVIL APPLICATION No. 0021 OF 2015
(Arising from Bitoko village L.C.I decision in Civil Suit No. L.C.C./BIT / 003 of 2014)

UGANDA TELECOM LIMITED APPLICANT

VERSUS

ADRATERE ORESTE RESPONDENT

Before: Hon Justice Stephen Mubiru.

RULING

This is an application for revision of a decision of the Bitoki village L.C.I which decision was later sought to be executed by the Chief Magistrate’s Court at Arua. The applicant seeks a revision of that decision and on grounds that the Bitoki village L.C.I acted *ultra vires* when it exercised a jurisdiction not vested in it and therefore when that decision was subsequently sought to be enforced by the Chief Magistrate’s Court at Arua by an order dated 27th May 2015, the Chief Magistrate exercised his jurisdiction with illegality and material irregularity, or injustice. Those grounds supporting the application are explained in the affidavit of the applicant’s Manager of Regulatory and Compliance, Mr. Oscar Kabata. The respondent did not file an affidavit in reply and chose to file written submissions only.

The background to the application is that on 4th October 2006, the applicant executed a lease agreement with Logiri sub-county in respect of a piece of land measuring 25 metres by 25 metres situate at Logiri Hill in Bitoki village, Ozoo Parish, Logiri sub-county, Vurra County in Arua District for the installation of a telecommunication mast and related equipment. On 29th June 2012, executed an amended lease by which it assigned its rights and obligations under the lease to another company, ATC Uganda. Sometime in April 2012, the Bitoki Community, descendants of Ombati comprising about fifty families living in the neighbourhood of the land in issue, blocked the access road to the site claiming that the land belonged to the Bitoki Community. At a meeting convened at Zebra 2 Hotel on 11th January 2013 to resolve the dispute, the Bitoki

Community named the respondent as their representative in the communal claim of customary ownership over that land. It was then proposed to the applicant's representatives at that meeting that the applicant should terminate its lease agreement over that land with Logiri sub-county and instead execute one with the respondent as a representative of the Bitoki Community, for the benefit of that community. The applicant's representatives undertook to relay the proposal to their headquarters.

Considering that no response was forthcoming from the applicant, sometime during December 2013 the respondent initiated a suit before the L.C.I Court of Bitoki village which on 15th July 2014 delivered a judgment in his favour, directing the applicant. He later sought enforcement of that judgment by way of application to the Chief Magistrate who on 27th May 2015 decreed the land to the respondent. It is on that basis that on 3rd September 2015 the applicant's successor in title revoked the lease agreement with Logiri sub-county and instead executed one with the respondent, running for a period of ten years with effect from 1st April 2015.

At the hearing of the application, Counsel for the applicant, Mr. Samuel Ondoma submitted that the main argument is that there was an illegality in the matter because the Local Council I court of Bitoki village in that it handled the matter without hearing the applicant and even serving him with the summons and the court documents therefore denying the applicant the right to be heard. To-date, apart from the decree there is no record of proceedings and no judgment written. The order is signed by one person so there is no quorum as per section 8 (a) of *The Local Council (Judicial Powers) Act*. Further, the L.C1 Court had no jurisdiction to hear the application and thus acted illegally because under section 76A (1) and (2) of *The Land Act*, the original jurisdiction of L.C courts is with the L.C II see *Nalongo Burashe v. Kekitiibwa* and that of *Busingye Jamia v. Mwebaze Abdul and Another*. The judgment was delivered on 15th July 2014 and by that time the constitutional court had already in the case of *Ruranga Rubaramira v. Electoral Commission [2008] 1 EA 387* declared the L.C Courts illegal as they were not properly constituted under the multiparty system.

The L.C.1 decision was later endorsed by the chief magistrate on 27th May 2015 by which he declared the respondent as the lawful customary owner of the land on basis of the decision of the

L.C.1 court. This decision too is a nullity and illegal since the original judgment was a nullity and illegal. He prayed that the judgment of the LC1 Court be set aside together with that of the Chief Magistrate. He prayed for the costs as well.

On the day the application came up for hearing, the respondent was not in court and was unrepresented but had filed his written submissions. The gist of his argument is that Local Council Courts were set up by an Act of Parliament and since they are still playing administrative roles such as endorsing recommendations on applications for passports, Registration Forms for National Identity Cards, Movement Permits for livestock and such similar activities which are still considered valid, their exercise of judicial power is valid too since no enactment has repealed the one conferring that jurisdiction. He contends the application is a belated measure to prolong litigation over the land further with the result of depriving him of the fruits of a judgment delivered in his favour. He prayed that the application be dismissed with costs.

The power of this court to revise decisions of magistrates' courts conferred by section 83 of *The Civil Procedure Act, Cap 71* is invoked where the magistrate's court appears to have; (a) exercised a jurisdiction not vested in it in law; (b) failed to exercise a jurisdiction so vested; or (c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice, provided that no such power of revision can be exercised unless the parties have first been given the opportunity of being heard; or where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person. It entails a re-examination or careful review, for correction or improvement, of a decision of a magistrate's court, after satisfying oneself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings of a magistrate's court. It is a wide power exercisable in any proceedings in which it appears that an error material to the merits of the case or involving a miscarriage of justice, occurred.

The Local Council Courts' jurisdiction over disputes 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, the dispute was *prima facie* triable by the Local Council Courts. However, section 11 of the *Local Council Courts Act, 2006* provides;

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

It so happens that Section 76A of *The Land Act* (introduced by section 30 of *The Land (Amendment) Act, 2004*), divested L.C. I Courts of primary jurisdiction over disputes in land, providing instead that “the Parish or Ward Executive Committee Courts shall be the courts of first instance in respect of land disputes.” The impact of that amendment was considered in *Busingye Jamia v. Mwebaze Abdu and another, H. C. Civil Revision No. 33 of 2011*, which was cited with approval by the Court of Appeal in *Nalongo Burashe v. Kekitiibwa, C. A. Civil Appeal No. 89 of 2011* where it was held that as a result of that amendment, the L.C.II Court has original jurisdiction to hear and determine disputes over land.

Furthermore, in *Ruranga Rubaramira v. Electoral Commission [2008] 1 EA 387*, the Constitutional Court decided that village, Parish and Ward Local Councils constituted under the movement system of political dispensation that remained in existence following the enactment of *The Constitution (Amendment) Act of 2005*, are not validly constituted until new ones are elected in accordance with the multiparty system of political dispensation that was introduced by that amendment. Since there is no evidence that Bitoki village L.C.I Court was compliant with that requirement, it was not properly constituted as a court as at 15th July 2014 when it delivered a judgment in favour of the respondent.

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 judititio* (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 exercised a jurisdiction not vested in it, all subsequent proceedings lack the foundation and legitimacy and cannot stand on their own. Therefore, when the Chief Magistrate in exercise of his supervisory power over L.C. Courts conferred by section 40 of the *Local Council Courts Act, 2006* decreed the land to the respondent on basis of proceedings and a judgment of the Bitoki village L.C.I Court, he did so erroneously. He failed to properly exercise a jurisdiction vested in him and proceeded with material irregularity when he instead sought to have that judgment enforced.

I accordingly find that the learned chief magistrate erred and this was a material irregularity in the exercise of his jurisdiction which has occasioned injustice to the applicant. I therefore set aside the decision of the Chief Magistrate and substitute the orders of the Chief Magistrate with an order quashing and setting aside the proceedings and judgment of Bitoki village L.C.I Court. In the circumstances, the costs of this application are awarded to the applicant.

Delivered at Arua this 20th day of July, 2017.

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Stephen Mubiru
Judge.
20th July 2017