

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CIVIL REVISION No. 0001 OF 2017
(Arising from Arua Grade One Magistrate's Court Civil Suit No. 0052 of 2003)

1. ALI DUBO	}	
2. OBIZA LEONNA	} APPLICANTS

VERSUS

1. LUKA MINDUNI	}	
2. EYOMA FELIX	}	
3. ODRUA PASIKOLE	}	
4. EYOMA MASIMINO	}	
5. POSFA ASU	}	
6. CIRILO AYOMA	}	
7. OGUDA SILIVIO	}	
8. JADRI FESTO	}	
9. WADRI HILLARY	}	
10. ENZITI O'DII	}	
11. JENESIO ASUA	}	
12. YAKOBO AJIO	}	
13. ECONI MICHAEL	} RESPONDENTS
14. JAMES ABETIA	}	
15. ODRUA SULUMANI	}	
16. EDROO JOAKINO	}	
17. EJUA ELISHA	}	
18. ORODRIO GABRIEL	}	
19. ALBERT ARIAKA	}	
20. GODFREY KARILO ARIAKA	}	
21. ELARIO ALETI	}	
22. KOMAKECH MARTIN	}	
23. ONDOMA RUDA	}	
24. YOSAM DROMA	}	
25. ATANZE DAVID	}	
26. CHRISTOPHER ARIAKA	}	
27. OLEY BEN	}	

Before: Hon Justice Stephen Mubiru.

RULING

This is an application for revision of the decision of the Grade One Magistrate at Arua delivered on 28th August 2007 by which he delivered judgment in favour of the respondents dismissing the suit the applicant had filed against them. The applicants seek a revision of that decision and an order for a re-trial on grounds that the Learned Magistrate Grade One exercised his jurisdiction with illegality and material irregularity, or injustice and that it is just and equitable that the decision be revised. The grounds supporting the application are explained in the affidavit of the second applicant which briefly are that; when a one Henry A. Acemari trespassed on his land around 1999, he sued him and the L.C.III Court of Vurra County decided in the applicants' favour in 2012. When Henry A. Acemari ignored the decision and instead permitted the respondents to settle on the land, this prompted the applicants to file a suit against them before the District Land Tribunal during the year 2003. In the meantime, Henry A. Acemari applied to the Chief Magistrate for leave to appeal the L.C.III decision out of time, which application was dismissed with costs, with the court directing him to cede vacant possession of the land to the applicants. Before the order could be executed, the suit which had been filed before the District Land Tribunal was transferred to the Grade One Magistrate's court and judgment was delivered against the applicants on 28th August 2007. The applicants filed a notice of appeal and applied for stay of execution of the decree. The notice of appeal was struck out later for failure to file a memorandum of appeal. The respondents proceeded to cause execution of the decree of the Grade One Magistrate by way of attachment and sale of the applicants' moveable and immovable properties. The applicants contend that their property attached was grossly undervalued. They further contend that the decision of the Grade One Magistrate is illegal in light of the prior decisions of the L.C.III court and that of the Chief Magistrate.

On their part, the respondents in an affidavit in reply sworn on their behalf by the nineteenth respondent are opposed to the application. They contend that they are not trespassers on the land in dispute since it belongs to their family, and the applicants are their paternal uncles. In 1980, the applicants' father and that of the nineteenth respondent gave part of the land to government for establishment of a market which later came to be known as Ejupala Market. They were not party to the proceedings before the L.C.III Court, the suit concerned a different subject matter

and different parties and there is no connection between them and the said Henry A. Acemari. The suit filed by the applicants against the respondents before the District Land Tribunal was finally dismissed with costs by the Grade One Magistrate and the applicants' notice of appeal against that decision was eventually struck out. The decree of the Grade One Magistrate has only been partially executed with an outstanding balance of shs. 3,883,000/= and the respondents' immovable property that was attached has been valued and a report submitted to the court. In the circumstances, the claim that the Grade One Magistrate exercised his jurisdiction with illegality and material irregularity or injustice is refuted.

Submitting in support of the application, counsel for the applicants Mr. Michael Ezadri Anyafio argued that the trial magistrate irregularly entered judgment in favour of the respondents when there were existing judgments of the L.C.III Court and that of the Chief Magistrate regarding the suit land. There should not have been a trial at all by the Grade One Magistrate. In the alternative, as an illegality, the Grade One Magistrate entertained the proceedings and arrived at his judgment without hearing from all the 28 defendants who are now the respondents. The learned magistrate further proceeded to pass judgment on a matter which sought for compensation but he proceeded to handle matters of trespass to land thereby arriving at the decision he made (see annexure "C" to the affidavit in support pages 1 – 6 of the judgment, specifically pages 2 – 5). The trial magistrate proceeded to entertain the evidence of D.W.1 then and concluded it as a full representation of all the other respondents. The evidence of the defendant the trial magistrate relied on happens to be the son of Acemari who was the party that lost before the L.C.III and the Chief Magistrate. The decision of the L.C.III was in 2003 and that of the chief magistrate by way of appeal which was decided on 18th February 2004. This clearly determined the matters in contention and had placed the applicants as the rightful owners of the land. The respondents in this case claim under Acemari who lost in those proceedings. Paragraphs 4, 5, 8 and 10 of the affidavit in reply (relating to the suit before the District Land Tribunal and the subsequent execution) all arose as a result of the Judgment passed irregularly by the Grade One Magistrate, which is not being denied by the respondent. Paragraph 3 of the affidavit in reply concerning the ownership of the land in question was never determined by the trial court. Had he done so he would perhaps have come to a different conclusion. In the further alternative, considering that there was no trial by the L.C.I Court, and that the trial took place at L.C.III because the L.C.II had failed to try it too, the entire proceedings would be a nullity

because when the District Land Tribunals were disbanded, jurisdiction was conferred on Chief Magistrates and not Grade One Magistrates. He prayed for the costs of the application since under section 27 of *The Civil Procedure Act* a successful party is entitled to costs. There was part execution of the decree. Shs. 850,000/= annexure “C.” This money was deposited in court and eventually transmitted to the respondents. The applicants’ land was attached and has been subdivided into multiple plots. Some of the plots have been sold off and the purchasers have constructed buildings on them. He prayed that the sale be stayed and that the application be allowed. In the alternative, that the court orders a fresh trial to determine the merits.

In response, counsel for the respondents Mr. Henry Odama argued that there was no irregularity caused by the trial magistrate. He relied on Paragraph 4 of the affidavit in reply to support his argument that the respondents were not parties to the trial that took place before the L.C.III and more particularly since no such trial ever took place. The first trial was by the Grade One which was decided in favour of the respondents. The trial magistrate had jurisdiction. The suit was formerly before the District Land Tribunal. Referring to paragraph 5 of the affidavit in reply, he submitted that Acemari is not related to any of the respondents. The respondents appear in their own right and do not claim under Acemari. He prayed that the application be dismissed but in the event that the court decides that the Grade One Magistrate did not have jurisdiction, then the parties should bear their own 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 gist of the arguments advanced against the impugned judgment of the Grade One Magistrate is that he acted illegally and without jurisdiction when he purported to exercise jurisdiction over a suit whose subject matter had been decided earlier by the Vurra Division L.C.III Court and later on appeal, by the Chief Magistrate. In essence, the argument advanced is that the suit was *res judicata* having been decided earlier by the L.C.III Court.

According to section 7 of *The Civil Procedure Act*, section 38 of *The Local Council Courts Act, 2006* and section 210 of *The Magistrates Courts Act*, no court may try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court. The plea of “*res judicata*” is in its nature an “*estoppel*” against the losing party from again litigating matters involved in previous action but does not have that effect as to matters transpiring subsequently. The judgment in first action operates as an “*estoppel*” only as to those matters which were in issue and actually or substantially litigated. It is matter of public concern that solemn adjudications of the courts should not be disturbed. Therefore, where a point, question or subject-matter which was in controversy or dispute has been authoritatively and finally settled by the decision of a court, the decision is conclusive as between parties in same action or their privies in subsequent proceedings. A final judgment or decree on merits by court of competent jurisdiction is conclusive of rights of parties or their privies in all later suits on points and matters determined in the former suit. In short, once a dispute has been finally adjudicated by a court of competent jurisdiction, the same dispute cannot be agitated again in another suit afresh (see *In the Matter of Mwariki Farmers Company Limited v. Companies Act Section 339 and others* [2007] 2 EA 185). By *res judicata*, the subsequent court does not have jurisdiction.

For the doctrine to apply, it must be shown that; a) there was a former suit between the same parties or their privies, b) a final decision on the merits was made in that suit, c) by a court of

competent jurisdiction and, d) the fresh suit concerns the same subject matter and parties or their privies (see *Ganatra v. Ganatra* [2007] 1 EA 76 and *Karia and another v. Attorney-General and others* [2005] 1 EA 83 at 93 -94).

The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue either actually or constructively in the former suit; the former suit must have been a suit between the same parties or between parties under whom they or any of them claim; the parties must have been litigating under the same title in the former suit; the court which decided the former suit must be a court that was competent to try the former suit or the suit in which such issue is subsequently raised; and the matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit. A suit therefore will not be *res judicata* where it is determined that the subject matter is different from that which was considered in the former suit, or the judgment in the former suit was not pronounced by a court of competent jurisdiction, or where it was not a decision given on the merits of the case, or where the parties are different and not privy to those in the earlier suit or if they are not litigating under the same title.

Attached as annexure “A” to the affidavit in support of the application is the record of proceedings of Vurra Division L.C.III Court. The record indicates that suit was between a one Henry A. Acemari as complainant and the two applicants as the respondents. The L.C.III court proceeded as a court of first instance by taking viva voce evidence of the complainant and his witnesses and the respondents and their witness. Henry A. Acemari accused the two applicants of wrongfully selling off customary land at Ejupala, which he had inherited from his father, to diverse persons. Their defence was that the land there fathers had settled on the land in dispute since the early 1900s and they had been born on that land and had lived on it ever since. The hearing commenced on 10th December 2002 and the decision was delivered on 25th February 2003 in favour of the first respondent (now first applicant) on basis of limitation and prescription. However, the record of proceedings does not in any way make reference to any proceedings having been conducted before the L.C.I. Court or at all. I therefore find as a fact that the L.C.III court in adjudicating the dispute sat as a court of first instance.

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

By that provision, L.C.III 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. Therefore, when the Chief Magistrate's court on 5th February 2004 dismissed Henry A. Acemari's application to appeal the decision of Vurra Division L.C.III Court out of time, that ruling too was of no

consequence and an exercise in futility. Since both courts lacked jurisdiction, there was no final pronouncement in existence by a court of competent jurisdiction such as would have triggered the doctrine of *res judicata* as a bar to a subsequent suit by any of the parties.

On the other hand, the appropriate time for consideration of issues of *res judicata* was before the Grade One Magistrate. It would have been tried by that court. *Res judicata* is a matter of mixed law and fact and may not be appropriately decided in an application of this nature limited in the capacity for production of evidence. When the Supreme Court in *Karia and another v. Attorney-General and others* [2005] 1 EA 83, had to decide on an issue as to whether *res judicata* may apply to a litigant in respect of a suit to which he was a party, it observed that the proper practice, is for the trial Court to try that issue and receive some evidence to establish that the subject matter has been litigated upon between the same parties, or parties through whom they claim. In that case, it was held that in order to establish *res judicata*, this issue should have been tried and since neither appellant was a party to the suit and the ensuing prior appeal, the Court of Appeal erred in holding that both A1 and A2 were barred by *res judicata*.

That notwithstanding, counsel for the applicant contended that the respondents claimed under Henry A. Acemari and that therefore, he was a party to the former suit under whom the respondents claim, hence triggering *res judicata*. The basis of this claim is that Henry A. Acemari is a father to the first respondent. What constitutes a party as a privy to another *Lotta v. Tanaki and others* [2003] 2 EA 556. In that case, the second respondent in the matter before court had filed suit against the mother and sister of the appellant, for possession of land. The court found in favour of the second respondent and ordered the appellant's mother and sister to vacate the suit land. The appellant subsequently commenced proceedings against the second respondent and two others, claiming ownership of the land. He averred in his plaint that the land had been donated to him by his mother, and that the respondents had since 1986 trespassed on the land. The respondents raised the preliminary objection of, inter alia, *res judicata*. The objection was upheld by the trial court and the High Court on appeal. On further appeal to the Court of Appeal, it was contended that the appellant was not claiming through his mother and therefore the suit was not *res judicata*. The Court of Appeal held that a person does not have to be formerly enjoined in a suit, but will be deemed to claim under the person litigating if he has a common interest in the subject matter of the suit. The suit property was at one time in the

occupation of the appellant's mother and sister, giving all three a common interest therein. Since the appellant's mother and sister had sued on the same subject matter, the appellant could not be dissociated from that litigation but was deemed to claim under.

The applicants in the instant application therefore had to prove that not only was the subject matter of the suit before the Grade One Magistrate directly and substantially in issue in a former suit, but also that the former suit was between the same parties or between parties under whom they or any of them claim, by proving the existence of a common interest in the subject matter of dispute between the respondents and Henry A. Acemari. It has not been shown that the said Henry A. Acemari shared a common interest in it with any of the respondents.

That aside, the claim the applicants relied on as having been the subject matter of the former suit was for "wrongfully selling off customary land" whereas that before the District Land Tribunal and subsequently before the Grade One Magistrate was one for "occupying lawful customary land without consent." Inappropriate as the expressions may be in naming the applicants' causes of action in each of the suits, the fact that one party had previously brought an unsuccessful action, based on the same subject matter, does not *estop* such a party from bringing a second action based upon the same subject matter which, in the circumstances of the case, could not have been joined with the first.

For example in *Gurbachan Singh Kalsi v. Yowani Ekori* [1958] EA 450, during 1956 the respondent brought an action against the appellant, claiming damages for the appellant's failure to erect a house pursuant to a building contract. The damages claimed included Shs. 8,000/= paid to the appellant under the contract, and Shs. 5,150/= for building materials taken over by the appellant. In his plaint the respondent averred that the appellant had been requested on several occasions to start the work, but had done nothing. By his defence the appellant denied the allegations and counterclaimed Shs. 6,000/= for work done under the contract. The trial judge held that the appellant began the work, but was stopped by the respondent, who objected to the blocks the appellant intended to use. He found that the respondent was entitled to judgment for Shs. 150/= on the claim for materials taken over, but dismissed the rest of the respondent's claim, and entered judgment for the appellant on the counterclaim.

The respondent then began a fresh action, alleging that he had paid the appellant Shs. 8,000/= under the building contract, and since the appellant had only done work to the value of Shs. 1,000/=, he claimed Shs. 7,000/= and interest and damages for breach of contract. In his defence to this action the appellant pleaded *res judicata* and alleged performance of the contract. The judge, who heard the preliminary point taken by the appellant, held that the plea of *res judicata* failed because the issues raised on the pleadings in the second action had not been heard and decided in the first action, and ordered that the case must proceed. On appeal the court held that the fact that the respondent had previously brought an unsuccessful action, based upon nonfeasance, did not estop him from bringing a second action based upon misfeasance which, in the circumstances of the case, could not have been joined with the first. This was because it was clear that in the first action brought by the respondent the “fact which it would be necessary for the plaintiff to prove” was that no work had been done under the contract by the defendant. In the second action the “fact which it would be necessary for the plaintiff to prove” was that though the work had been begun it had not been completed and inferior materials had been used. Clearly these were distinct, inconsistent and mutually destructive allegations.

Beside the requirement to prove that the parties in the subsequent suit are privies to a party in the former suit, there is the additional requirement that the parties must have been litigating under the same title in the former suit. The meaning of “litigating under the same title” was considered in the case of *Saleh Bin Kombo Bin Faki v. Administrator-General, Zanzibar [1957] EA 191*. In that case, the plaintiff sued the Administrator General as administrator of the estate of a deceased broker named Kassamali Alibhai, for Shs. 6,200/-, alleging that this sum was paid by the plaintiff to the deceased towards the purchase price of certain shambas which the deceased as broker sold to the plaintiff by public auction in January, 1954, on the instructions of the Administrator General as administrator of the estate of the late Hassanbhai Dadabhai. The plaintiff claimed that he had not been credited with that payment as being made towards the purchase price of the shambas out of Hassanbhai Dadabhai’s estate. In support of his contention the plaintiff produced four receipts for sums totalling Shs. 6,200/= made out by the deceased. The defendant contended that in a case in the previous year the court had held that these four receipts were not proved to relate to the present plaintiff’s purchase of the deceased Hassanbhai Dadabhai’s shamba property through the broker Kassamali Alibhai and that the issue was therefore *res judicata*. In that case

the defendant in his capacity as administrator of the late Hassanbhai Dadabhai was the plaintiff and the plaintiff was the defendant. It was held that the defendant's contention as to *res judicata* must fail as although in each of the two cases the (plaintiff as) Administrator General was a party, he was not in both cases "litigating under the same title": in the former case he sued as administrator of the estate of the late Hassanbhai Dadabhai and in the latter case he had been sued as administrator of the late Kassamali Alibhai.

Now in that case, where the Administrator General was plaintiff and the present plaintiff was defendant, the question whether these four receipts now produced as exhibit A related to the present plaintiff's purchase, through the broker Kassamali, of the shamba property of the estate of Hassanbhai Dadabhai, was certainly the principal issue in the case, and this court decided that the present plaintiff had failed to prove that the four receipts related to that sale. At first sight, then, the matter might appear to be *res judicata*. The defendant's contention must, however, fail on one point, namely that although in each of the two cases the Administrator General was a party, he was not in both cases "litigating under the same title" for the purpose of s. 6 of the Civil Procedure Decree, which deals with *res judicata*. For in the former case he sued as administrator of the estate of the clove shamba owner Hassanbhai Dadabhai, whereas in the present case he is sued as administrator of the broker Kassamali Alibhai. Mulla, in his Commentary on the Indian Civil Procedure Code, (9th Edn.) at p. 62 makes it clear, citing Indian decisions in support of his views, that the expression "the same title" in s. 11 of the Indian Code (which is reproduced in s. 6 of the Zanzibar Decree) means "the same capacity", that is to say the same representative capacity. The Administrator General having been a party in a different representative capacity in the two cases, the defence of *res judicata* must fail, notwithstanding that the matter is indeed *res judicata* in every other respect.

In the instant application, the applicants have failed to prove that the suit before the Grade One Magistrate concerned a matter that was directly and substantially in issue, either actually or constructively, in any former suit. They have further failed to prove that any such former suit was between the same parties or between parties under whom they or any of them claimed and that such parties litigated under the same title in the former suit. It has been further established that the Vurra Division L.C.III Court which decided the former suit alluded to was not competent to try the former suit and hence the decision by the Chief Magistrate that sprung there from was equally erroneous. It as well is an anomaly for the applicants, who commenced the suit before the District Land Tribunal, to contend that the suit, they themselves initiated, was one barred by *res judicata*. The argument of *res judicata* advanced therefore fails for all the above reasons.

Be that as it may, sometime during September 2003 the two applicants sued the respondents before the Arua District Land Tribunal claiming that the respondents had failed to compensate them for “occupying lawful customary land without consent.” In their amended written statement of defence filed on 5th July 2004, the respondents contended that they were lawfully occupying land belonging to the Opiya Oyoo Community, which community had permitted them to establish a market thereon and which had been operational since 1980 and is now known as Ejupala Market. The market was established on an area which had been reserved for cattle vaccination exercises since the 1960s. The suit was first fixed for hearing before the District Land Tribunal on 8th July 2004 but due to time constraints, it was adjourned. Hearing of the suit commenced on 2nd November 2004, with the testimony of the first applicant. He was thereafter cross-examined by each of the respondents on various dates and concluded his testimony. The last time the suit came up for hearing was on 28th November 2005 but due to lack of quorum, it was adjourned to 1st March 2006.

Section 95 (7) of *The Land Act, 1998*, had removed the jurisdiction to try land disputes from Magistrates’ courts to the District Land Tribunals. District Land Tribunals had jurisdiction to entertain all disputes relating to land which did not exceed fifty million shillings. Sometime during the year 2006, District Land Tribunals ceased to operate after expiry of their contracts. However, the Chief Justice on 1st December 2006 issued *Practice Direction No. 1 of 2006* which enabled magistrates Grade One and above to exercise jurisdiction over land matters in accordance with Section 95 (7) of *The Land Act*, until new chairpersons and members of District Land Tribunals are appointed or otherwise. So with effect from 1st December 2006, Magistrates courts resumed their jurisdiction over land matters.

Following the phasing out of District Land Tribunals, the suit was transferred to the Grade One Magistrate’s Court at Arua. Before the Grade One Magistrate, continuation of the hearing commenced on 9th May 2007 with the testimony of the second applicant. Thereafter, the applicants’ two witnesses; Chandia Kisori and Chisanju Dradria testified, and the applicants closed their case. The defence case opened on 5th June 2007 with the testimony of the first respondent. He was followed by a one Wadri Hillary who testified as D.W.2, and then Inziti Odii as D.W.3, Komakech Martin as D.W.4, Ejuna Erisa as D.W.5, Albert Ariaka as D.W.6, Agwanya Peter as D.W.7, Natalie Okudinia as D.W.8, Odiki Wido as D.W.9, Awuzu Emmanuel

as D.W.10 and the respondents closed their case. The court then visited the *locus in quo* on 15th August 2007, heard additional evidence from some of the witnesses, recorded its observations and drew a sketch map of the area in dispute. The judgment was subsequently delivered on 22nd August 2007 by which the trial magistrate decided that the applicants' claim was barred by limitation and that the land belongs to the respondents.

According to *Practice Direction No. 1 of 2006* read together with section 95 (7) of *The Land Act*, until the land tribunals are re-established and commence to operate, magistrates courts continue to have the jurisdiction they had immediately before the 2nd July, 2000. Section 207 (2) of *The Magistrates Courts Act*, provides that where the cause or matter of a civil nature is governed only by civil customary law, the jurisdiction of a Magistrate Grade One is unlimited. The matter transferred to the Grade One Magistrate from Arua District Land Tribunal having been one governed only by civil customary law, I have not found the lack of jurisdiction advanced by counsel for the applicants. His additional submission that the suit was decided only upon the testimony of the first respondent is not supported by the record since nine other witnesses testified. In any case, section 133 of *The Evidence Act*, provides that no particular number of witnesses is required for the proof of any fact. It follows that not all parties to a suit need to testify to prove a fact. I find that on the facts of the suit, the testimony of the first respondent was sufficient and failure by the rest of the respondents to testify did not cause any injustice.

I have carefully perused the entire record of proceedings, right from the time the applicants filed their claim before the District Land Tribunal up to the time judgment was delivered against them and I have not found any evidence of exercise of a jurisdiction not vested in the Grade One Magistrate in law, neither have I found any failure on his part to exercise a jurisdiction so vested nor evidence that he acted in the exercise of such jurisdiction illegally or with material irregularity or injustice. Neither have I found any reason to justify the stay of execution sought. I therefore do not find any merit in the application and it is hereby dismissed with costs.

Delivered at Arua this 27th day of April, 2017.

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Stephen Mubiru
Judge.
27th April 2017.