

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KABALE
CIVIL MISCELLANEOUS APPLICATION NO.083 OF 2017

BUREHENDA IRENE

APPLICANT

VERSUS

TUMUZEIRE JOLLY

RESPONDENT

BEFORE HON.JUSTICE MOSES KAZIBWE KAWUMI

RULING

This an application by Notice of Motion brought under Sections 83 and 98 of the Civil Procedure Act and Order 52 of the Civil Procedure Rules. The Applicant seeks a Declaration that the judgment of the LC111 Court of Bubaare Sub-County be set aside and that the Applicant is the lawful owner of the disputed land as decided by the LC1 Court of Rwembugu Village.

The gist of the complaint from which the Orders sought emanate is that in 2002 the Applicant sued the Respondent in the LC1 Court at Rwembugu. The Court decided the case in the Applicant's favour and declared that she was the lawful owner of the land in dispute. The Respondent did not appeal but in 2017 filed a suit over the same land in the LC111 Court at Bubaare which decided against the Applicant. She now seeks to have the decision reviewed and set aside on the basis that the LC111 Court is not seized with original jurisdiction to handle land matters.

The Respondent was served with the Notice of Motion on the 13th November 2017 and there is on record an Affidavit of service on the basis of which I allowed Mr.Beitwenda for the Applicant to proceed ex -parte. It is however trite that even where a suit proceeds exparte or not, the burden on the part of the Plaintiff to prove the case to the required standard remains.

Yoswa Kityo V Eriya Kaddu[1982]HCB 58

Section 83 of the Civil Procedure Act provides;-

'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 in it ;OR*
- 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 orders in it as it thinks fit....."

Section 2(l) of the Civil Procedure Act defines a Magistrate's Court as “ a Court established under the Magistrates Courts Act.”

Section 1(c) of the Magistrates Courts Act provides;

“Magistrate's court” means “any Court established by or under section 3”.

Section 3 of the Act provides;-

“ There shall be established in such places in each magisterial area as the Minister may, after consultation with the Chief Justice, by statutory instrument designate magistrates courts to be known as the magistrates courts for the area in respect of which it has jurisdiction.”

The Application seeks to have a matter decided by the LC111 Court revised and set aside. I find this to be contrary to the dictates of Section 83 of the Civil Procedure Act which restricts revision to matters emanating from Magistrates' Courts. Local Council Courts are established by the Local Council Courts Act and not the Magistrates Courts Act.

Counsel also relied on Section 98 of the Civil Procedure Act to buttress his Application. This provision sets out the inherent powers or residual powers of Court to prevent or correct any injustice. These powers cannot however be exercised by a Court with no jurisdiction to entertain the suit before it as in the instant case. Jurisdiction is a creature of statute and cannot be assumed or inferred from the circumstances of the case before Court.

It also the position of the Law that a party to a dispute cannot ordinarily invoke the inherent jurisdiction of the Court under section 98 if another express remedy exists.

Alcon International Ltd V Kasirye,Byaruhanga&Co.Advocates [1996]HCB 61

This Court is thus seized with no jurisdiction to revise judgments of the Local Council Courts and the Application is dismissed .I will not make any order as to costs because the Respondent did not oppose the Application.

Moses Kazibwe Kawumi

Judge

6th April 2018.