

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KABALE**  
**CIVIL MISCELLANEOUS APPLICATION NO.84 OF 2017**

**RUTWAZA SHADRACK**

**APPLICANT**

**VERSUS**

**RUTABANAJOHN**

**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 proceedings and decision of the LC11 Court of Muhindura Parish and Kanaba LC111 Court Appellate decision are devoid of any force of Law. The Applicant further seeks the Revision and setting aside of the respective decisions and order for a retrial in a competent Court.

The gist of the complaint from which the Orders sought emanate is that the Applicant filed a land matter in the LC11 Court of Muhindura which was decided in his favour on the 24<sup>th</sup> June 2017. The Respondent appealed to the LC111 Court of Kanaba Sub-County which decided in his favour on the 17<sup>th</sup> August 2017. The Applicant now seeks to have the decisions reviewed and set aside on the basis that the LC11 and LC111 Courts are not seized with jurisdiction to handle land matters.

The Respondent was served with the Notice of Motion on the 19<sup>th</sup> December 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 an LC11 and LC111 Courts 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 the judgments of the Local Council Courts and the Application is hereby dismissed.I will not make any order as to costs because the Respondent did not oppose the Application.

Moses Kazibwe Kawumi

Judge

6<sup>th</sup> April 2018.