

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)

CIVIL REVISION CAUSE NO. 001 OF 2021

(ARISING FROM C/S NO. 10 OF 2019 IN THE LOCAL COUNCIL 1 COURT OF BUSEGA AT RUBAGA -  
KAMPALA)

1	LULE EDWARD	
2	LULE ROBINAH NAMYALO	APPLICANTS
V		
	KIATAKA HENRY	RESPONDENT

BEFORE: HON. LADY JUSTICE P. BASAZA - WASSWA

RULING

Representation:

Mr. Nsubuga Martin and Mr. Kutesa Job<sup>1</sup> for the Applicants.

Mr. Asiimwe Brian<sup>2</sup> for the Respondent.

Introduction:

[1] This Ruling is in respect of an application brought by motion, by the Applicants: **Mr. Lule and Ms. Lule**. They seek for Orders that the judgment and orders of the Local Council 1 (**LC 1**) Court of Busega - Kigwanya Zone, delivered on September 6, 2020: vide **Civil Suit No. 10 – 2019**, be revised and set aside. Civil Suit No. 10 – 2019, and

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<sup>1</sup> Of M/s Ssemwanga, Muwazi & Co. Advocates, and of M/s Ssekyewa, Matovu & Co. Advocates, Respectively.

<sup>2</sup> Of Kania & Alli Advocates.

the said LC 1 Court Judgment and Orders shall hereafter be referred to as: 'the Original suit', and 'the impugned Decision', respectively.

- [2] The Applicants premise their application on the provisions of **Articles 2, 26, 28 (1), 42 and 44 (c) of the 1995 Constitution of Uganda**. And **Section 33 of the Judicature Act<sup>3</sup>**, and **Sections 83 and 98 of The Civil Procedure Act<sup>4</sup>**. And **Section 40 of the Local Council Courts Act, 2006** and **Order 52 Rules 1, 2 and 3 of The Civil Procedure Rules<sup>5</sup>**.

#### Background

- [3] In the original suit, **Mr. Kitaka**- the Respondent in this present suit – sued **Mr. Lule and Ms. Lule**, - who were the Defendants therein, alleging that on November 24, 2018 the duo fraudulently and unlawfully purchased land comprised in **Block 21, Plot 144 at Busega, Kigwanya Zone, Rubaga Division, Kampala District**, measuring **0. 21 acres** (hereafter referred to as: 'the suit property').
- [4] In a letter by their lawyers dated February 3, 2020 (their defence) in the Original suit, Mr. Lule and Ms. Lule denied the said allegations. They answered that they are *bona fide* purchasers for value, of the suit property, at a consideration of **UGX 180,000,000/= (Uganda Shillings: One Hundred and Eighty Million)**, as per a sale agreement dated November 24, 2018. And that Mr. Kitaka was laying false claim over the suit property and has no share in the estate of the late Sereste Bazze.

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<sup>3</sup> Cap 13

<sup>4</sup> Cap 71

<sup>5</sup> S.I 71-1

[5] By the impugned Decision, made in *ex parte* proceedings, the LC 1 Court determined the five (5) issues framed before them, in favour of Mr. Kitaka. The Court Ruled thus:

- i) Issue No. 1 was answered in the affirmative. That by virtue of **sections 10 (1) (e) and 10 (2) (b) of the Local Council Act, 2006**; the Court had Jurisdiction to hear and determine the matter before them.
- ii) For issue No. 2; that the Original suit disclosed a cause of action, and that it was not time barred.
- iii) Issue No. 3 was answered in the affirmative. That the purchase of the suit property by Mr. Lule and Ms. Lule was fraudulent and unlawful, because two (2) beneficiaries of the estate of the late Sereste Bazze, were left out.
- iv) Issue No. 4 was answered in the negative. That Mr. Lule and Ms. Lule were not *bona fide* purchasers for value, of the suit property. That they failed to prove that they were not aware of any fraud.
- v) For issue No. 5, Remedies were granted; *inter alia*, directing that the suit property be subdivided amongst the beneficiaries of the estate of the late Serestine Bazze. That the Respondent: Mr. Kitaka and his sister: Nassuna Judith be given a share thereof.

[6] Being dissatisfied with the impugned decision, **Mr. Lule and Ms. Lule** filed the present Application, and hence this Ruling.

Grounds for the Present Application:

[7] The gist of the grounds relied on by Applicants, as detailed in an affidavit in support sworn by Mr. Lule, is;

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- a) That the LC 1 Court at Busega Kigwanya exercised jurisdiction not vested in it and made the impugned decision where the subject matter is registered land.
- b) That the LC 1 Court at Busega Kigwanya exercised jurisdiction not vested in it when they made the impugned decision where the value of the subject matter is way beyond their pecuniary jurisdiction as per the sale agreement.
- c) That the LC 1 Court at Busega Kigwanya condemned the Applicants unheard.
- d) That the impugned Decision directing the subdivision of the suit property is unconstitutional and amounts to unlawful deprivation of the right to own property.
- e) That a declaration doth issue that the Applicants are the lawful Owners of the suit property, and that the costs of this application be paid by Mr. Kitaka.

Affidavit in opposition:

[8] In his affidavit in reply, Mr. Kitaka opposed the application, and stated: (the gist)

- a) That the application is barred by law, incompetent, misconceived and unmeritorious.
- b) That the application does not satisfy the conditions for revision under **Section 83 of the Civil Procedure Act**: That the original suit was heard by the LC 1 Court and not a Magistrate's Court, and where one is aggrieved, one should appeal to the LC 11 Court of the Area, and not apply for Revision to the High Court.
- c) That Mr. Lule and Ms. Lule connived with Mr. Sseninde Simon and others to fraudulently acquire letters of Administration to the estate of the late Bazze and transferred the suit property into their names.

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d) That all parties were given a chance to be heard.

[9] In rejoinder, **Mr. Lule** averred that their application is meritorious and competent. That the High Court is vested with Jurisdiction to entertain the matter.

Issues:

[10] Two issues emerge for this Court's determination:

1. **Whether this Court has jurisdiction to entertain a Revision application arising from an LC 1 Court Decision? If so;**
2. **Whether sufficient cause has been shown to warrant that the impugned Decision is revised and set aside?**

Submissions of Counsel:

[11] Learned Counsel for both parties each filed their respective written submissions, that I have duly considered. For brevity, I will not reproduce their arguments here, and will only refer to them where necessary.

Analysis by Court on issue No. 1:

[12] By way of a preliminary point of law, **Mr. Asiimwe:** learned Counsel for the Respondent argued in his written submissions; that under **section 83 of the Civil Procedure Act**, the High Court is only empowered to revise the decisions of the Courts established under **the Magistrates Courts Act, Cap 16**. And not the decisions of the Courts established under **the Local Council Courts Act, 2006**. Citing **Section 32 (1) and 2 (a) of the Local Council Courts Act, 2006** he submitted that the

appropriate remedy in the circumstances, was for the Applicants to appeal to the Parish Local Council Court.

[13] Learned Counsel cited **sections 17 (1) of the Judicature Act, Cap 13, and 40 of the Local Council Courts Act, 2006** and further argued that the supervisory powers conferred upon the High Court over Magistrates Courts do not include powers to revise the decisions of the Local Council Courts.

[14] In answer, Learned Counsel for the Applicants argued that the High Court is clothed with original unlimited jurisdiction, that cannot be ousted by implication. That the same ought to be expressly stated, which is not the case under **the Local Council Courts Act**.

He cited **Articles 129, 138 and 139 of the 1995 Constitution of Uganda and sections 40 of the Local Council Courts Act, 2006 and section 98 of the Civil Procedure Act**, and referred this Court to the decision of: **Musota, J., in Paskali Juma Wasike v. Alex Onyangho Situbi & 2 Ors<sup>6</sup>**,

[15] I have carefully considered the law, and all the authorities cited by learned Counsel. It is my view that **Section 40 of the Local Council Act, 2006** provides guidance. That section provides that:

'The general powers of supervision over Magistrates' Courts conferred upon the High Court by the Judicature Act may be exercised by the Chief Magistrate over local council courts on behalf of the High Court'.

*Musota J.*

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<sup>6</sup> HCMA-004 - 2010: (HC Circuit- Mbale)



[16] To that end, I subscribe to the interpretation of section 40 by Musota, J., (as he then was). In his decision in the Paskali Juma Wasike case (supra), he stated that:

'The Legislature carefully chose the word "**may**" not "**shall**" to delegate – High Court powers of supervision to the Chief Magistrate. This means that section 40 only delegated the High Court power of supervision to the Chief Magistrate. This did not amount to ouster of Jurisdiction. Where there is ouster of Jurisdiction from the High Court, it must be in express terms and the next course of action stated in certain terms"

[17] In the Paskali J. Wasike case (supra), like in this present case, Counsel for the Respondent therein argued that an LC Court is not a subordinate Court to the High Court. That by implication, Section 83 of the Civil Procedure Act excludes LC Courts as subordinate Courts to the High Court. That therefore; the High Court has no jurisdiction to revise the judgment of the LC Court under that Section 83.

[18] In that case, **Musota, J., (as he then was)** held that the High Court has supervisory powers over Local Council Courts, and that for that purpose, those courts are subordinate courts to the High Court. He premised his decision on sec. 14 (1) & (2) of the Judicature Act, Sec. 98 of the Civil Procedure Act, and sec. 40 of the Local Council Courts Act.

[19] I adopt that position in the Paskali J. Wasike case (supra).

[20] Issue No. 1 is thus held in the affirmative: The High Court has jurisdiction to entertain a Revision application arising from an LC 1 Court Decision, and the latter Court is a subordinate Court to the High Court.

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- [21] In the result, the point of law raised by learned Counsel for the Respondent is overruled.

Analysis by Court on Issue No. 2:

- [22] The second issue is governed by Section 83 of the Civil Procedure Act. That section provides that:

'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, or
- (c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice,

The High Court may revise the case and make such order in it as it thinks fit, but no such power of revision shall be exercised where, from the lapse of time or other cause, the exercise of that power would involve serious hardship to any person'.

- [23] It was argued for Mr. Lule and Ms. Lule (the Applicants), that the LC 1 Court of Busega – Kigwanya village was not vested in law to entertain the Original suit. For this proposition, their learned Counsel relied on the **provisions of Section 10 (1) (e) of the Local Council Courts Act, 2006 and the 3<sup>rd</sup> Schedule** thereto.

- [24] There was no answer to this by Learned Counsel for Mr. Kitaka (the Respondent). His Counsel did not address this issue in his submissions.

- [25] **It is trite that the Parish or Ward Executive Committee Court, and not the Village Executive Committee Court is the Court of first instance in land matters.** This

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legal position was taken as correct by the Court of Appeal in their decision in Nalongo Burashe v Kekitiibwa Mangadalena<sup>7</sup>.

[26] In that Nalongo Burashe case (supra), the Justices of the Court of Appeal agreed with the proposition that section 30 of the Land (Amendment) Act<sup>8</sup>, 2004 and Section 76A of the Land Act<sup>9</sup>, removed the legal Jurisdiction from a village executive Committee to try and determine land disputes.

[27] They further agreed entirely with the Judgment of Bashaija, J., in Busingye Jamiya v Mwebaze Abdu and Anor<sup>10</sup> that:

'...Because the provisions contained in sections 10 and 32 of the Local Council Courts Act, 2006 are expressed to be subject to the provisions of any other written law, accordingly, a Local Council Court established at the village level has no jurisdiction to try and determine land disputes or matters related to land. Section 76 A (1) and (2) of the Land Act<sup>11</sup> have to be read with all the necessary modifications and / or adoptions in light of the changes in names of courts established under the Local Council Courts Act, 2006...Section 10 (1) (b) and (e) and section 32 (2) (c) of the Local Council Courts Act, 2006 have to be construed subject to the provisions of Section 76 A (1) & (2) of the Land Act; Cap 227'.

(Underlining added)

[28] Guided by the above authorities, it is clear that the LC 1 Court of Busega-Kigwanya village exercised jurisdiction not vested in it in law.

[29] Issue No. 2 is thus held in the affirmative. I am satisfied that sufficient cause has been shown to warrant that the impugned Decision is revised and set aside.

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<sup>7</sup> COA Civ. Appeal No. 89 of 2011

<sup>8</sup> Act No. 1 of 2004

<sup>9</sup> Cap 227

<sup>10</sup> HC Civ. Revision No. 033 of 2011

<sup>11</sup> Cap. 227

Decision of this court:

[30] In the final result, since 'no court can confer jurisdiction upon itself, the impugned Decision of the LC 1 Court of Busega- Kigwanya village amounts to nothing'. 'Whatever a court purports to do without jurisdiction is a nullity *ab initio*. Its judgments and orders are void and of no legal effect'. For this Principle see Desai v Warsama<sup>12</sup>.

[31] This application therefore succeeds and is allowed. The original suit No. 10 of 2019 in the LC 1 Court of Busega- Kigwanya village is accordingly revised and set aside. The costs of this application are awarded to Mr. Lule and Ms. Lule (the Applicants) against Mr. Kitaka Henry (the Respondent). (Sec. 27 of the CPA, applied).

I so Order,

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**P. BASAZA - WASSWA**

**JUDGE**

July 31, 2023

Ruling delivered electronically on the Judiciary ECCMIS Portal and via email to the parties.

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<sup>12</sup> [1967] 1 E.A 351