

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**REVISION CAUSE NO. 024 OF 2023**  
**(ARISING FROM CASE NO.028/2022/23 LCIII COURT,KATABI**  
**TOWN COUNCIL)**

**LUVULE RONALD ::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**KASIRIVU RICHARD::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA**

**RULING.**

**Introduction**

1. Luvule Ronald hereinafter referred to as the applicant brought this application against Kasirivu Richard hereinafter referred to as the respondent under Article 26 of the 1995 Constitution, Sections 17 and 33 of the Judicature Act, Section 83 and 98 of the Civil Procedure Act, Section 40 of the Local Council Courts Act 2006 and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules for orders that;



- i) That the ruling and orders made by the Local Council III Court, Katabi Town Council on the 14<sup>th</sup> day August 2023 be revised and set aside.
- ii) Costs of the application be provided for.

### **Background**

2. The applicant is the registered proprietor of Land comprised in Busiro Block 436 Plot 657 Mengo District Land at Nalugala. The applicant is a brother to the Late Kayima Francis, the father to the respondent herein. The respondent filed case No. 028 of 2022-2023 at the Local Council III Court of Katabi Town Council against the applicant. The case was decided in favor of the respondent and court made various orders in respect of the suit property. It is against this background that the applicant brought this application.

### **Applicant's evidence**

3. The application is supported by the affidavit deposed by Luvule Ronald the applicant herein which sets out the grounds of the application but briefly states as follows;



- i) THAT I was the defendant in case No' 028/2022-2023 Local council III Court where judgement was entered against me on the 14<sup>th</sup> of August 2023.
- ii) That during hearing of the case I informed court how the suit land wasn't a kibanja since I purchased the same and I acquired a certificate of title but the court ignored the same.
- iii) That the only kibanja land I had knowledge of that was owned by my late brother Kayima Francis was located in Bulenga and in his last Will he made mention of the same.
- iv) That local council III court at Katabi town council did not have jurisdiction to entertain the matter as filed by the respondent.
- v) That it is in the interests of justice that the orders by the local council III court be revised and set aside.

**Respondent's evidence**

4. The respondent replied to the application by an affidavit in reply deponed by Kasirivu Richard the respondent herein but briefly states as follows;



- i) That the applicant was the respondent in case No.28/2022/23 at local council III Katabi town council Wakiso and the said case was determined considering evidence of both parties.
- ii) That the suit land formed part of the customary kibanja that formed part of Kayima Francis's land that he mentioned in his Will but the applicant took advantage without the knowledge of the respondent and processed a certificate of title to the suit land,
- iii) That the kibanja land at Bulenga also forms part of Kayima Francis's interest which he mentioned in his last Will.
- iv) That the applicant ought to have filed this application before the chief magistrate court of Entebbe other than bringing it before this court.
- v) That the applicant filed an appeal in the chief magistrate court at Entebbe and at the same time brought the application before this court.



**Representation;**

5. The applicant was represented by Mr. Tumwesigye Everisto of M/s Kabusu Muhumuza & Co. Advocates whereas the respondent was represented by Mr. Lubega Robert of M/S Lunar Advocates. Both parties filed their affidavits and submissions which I have considered in the determination of this application.

**Issues for determination;**

1. ***Whether the applicant is entitled to the orders sought in this application?***

**Resolution and determination of the application;**

6. Counsel for the applicant submitted that the Local Council Court exercised jurisdiction not vested in it when it purported to hear the respondent's suit and gave grave orders therein. He further submitted that although the Local Council Court has jurisdiction to hear land matters, the matters relating to land must be land held under customary tenure. The subject matter of the dispute in the lower court was Land registered under the provisions of the Registration of Titles Act Cap 230 in which the applicant is the registered proprietor. Counsel relied on Section 10 of the Local



Council Courts Act and Regulation 26 of the Local Council Regulations of 2007.

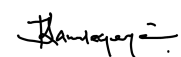
7. Counsel further submitted that section 59 of the Registration of Titles Act provides that a certificate of title is conclusive evidence of title. He submitted that the court kept on referring to the land as kibanja which was a material irregularity and therefore the Local Council Court had no jurisdiction to entertain the matter and thereafter make orders that infringe on the applicant's title to the Land.
8. Counsel also submitted that it is trite law that if a court has no jurisdiction its decision is a nullity. Jurisdiction cannot be conferred on court by consent of the parties. He also added that although the applicant did not contest about the jurisdiction of the court at the time, it is trite law that a court of law cannot sanction an illegality and an illegality once brought to the attention of court, overrides all questions of pleadings, including any admission thereof and court cannot sanction an illegality. **(See; Makula International Limited Vs His Eminence Emmanuel Cardinal Nsubuga and Anor CACA No 4 of 1981).**



9. In response Counsel for the respondent submitted that the Local Council Courts have jurisdiction to hear and determine the matter. Counsel relied on section 10 of the Local Council Courts Act that provides for the jurisdiction of the Local Council Courts.
10. Counsel also submitted that the case before the LC III Court was one of customary Bailment as it is a custom among the Baganda for Land to be bailed to siblings that have the resources to develop the same by family members. Counsel cited **Kampala District Land Board & Anor vs Venansio Babweyaka & 3 Ors Civil Appeal No 2 of 2007** to define a custom.
11. I have carefully considered the affidavits and submissions filed by both parties and this court will proceed to determine this application in light of the same.
12. Before I extensively examine this issue, I wish to highlight a point of law regarding established facts between the parties in this case that resolves the matter.
13. **Black's Law Dictionary (9<sup>th</sup> Edition)** defines revision as a re-examination or careful review for correction or improvement or an altered version of work.



14. The jurisdiction of the High Court to revise decision of the Local Council Courts Act is set out under Section 17 of the Judicature Act and Section 40 of the Local Council Courts Act Section 17 of the Judicature Act provides thereof that the High Court shall exercise general powers of supervision over Magistrates Courts.
15. Section 40 of the Local Council Courts Act provides thereof 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.
16. In the case of ***Pascal Juma Wasike vs Alex Onyango Situbi & Anor MA 04 of 2010*** court observed that the High Court is still seized with jurisdiction to hear the application for revision notwithstanding the delegation of the same powers to supervise Local Council Courts given to the Chief Magistrate Court by Section 40 of the Local Council Courts Act.
17. In the present case, it is undisputed that the matter was initially filed in the LC III Court of Katabi Town Council. Both parties acknowledge this fact in their affidavits as per Paragraph 2 of the affidavit in support of the application deponed by Luvule Ronald





and Paragraph 3 of the Affidavit in reply deposed by Kasirivu Richard.

18. Section 10 of the Local Council Courts Act provides for the Legal jurisdiction of Local Council Courts;

(1) Subject to the provisions of this Act and of any other written law, every local council courts shall have jurisdiction for the trial and determination of—

(a) causes and matters of a civil nature specified in the Second Schedule to this Act;

(b) causes and matters of a civil nature governed only by customary law specified in the Third Schedule;

(c) causes and matters arising out of infringement of bye-laws and Ordinances duly made under the Local Governments Act;

(d) Matters specified under the Children's Act;

(e) Matters relating to land.

**19.** Section 11 provides for where suits in Local Council Courts may be instituted and provides as follows; ***Every suit shall be instituted in the first instance in a village local council***



***court, if that court has jurisdiction in the matter, within the area of whose jurisdiction—***

***(a) the defendant actually resides at the time of the commencement of the suit; or***

***(b) where the cause of action in whole or in part arises; or***

***(c) In the case of a dispute over immovable property, where the property is situated.***

***(2) Subject to this Act, every suit shall be received by the Chairperson and in the absence of the Chairperson, by the Vice-Chairperson.***

20. The aforementioned provisions of the Law clearly show that neither the LC II nor the LC III Court have original jurisdiction as the Local Council Courts Act and its regulations require that all suits be filed in the Village Local Council Courts as a court of first instance.

21. The position is affirmed by Section 32 of the Local Council Courts Act which provides for appeals and states as follows;

***(1) A party dissatisfied with the judgment or order of a local council court may, subject to the provisions of this section or any written law, appeal against the judgment or order;***



***but no appeal shall lie from a judgment or order passed or made as a result of the consent of the parties.***

***(2)An appeal shall lie—***

***(a)from the judgment and orders of a village local council court to a parish local council court;***

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

***(c)from the judgment and orders of a town, division or sub-county local council court to a court presided over by a Chief Magistrate;***

***(d)from decrees and orders made on appeal by a Chief Magistrate, with the leave of the Chief Magistrate or of the High Court, to the High Court.***

22. The preceding section outlines a straightforward course of action for a case brought before a Local Council Court, detailing the process for initiating an appeal from judgments and orders issued by the Village Local Council Court. The LC II and LC III exercise their appellate jurisdiction based on this framework.

23. In the case of ***Mutonyi Margret Wakyala v Tito Wakyala & Ors [2011] UGHC 117*** Justice Stephen Musota while deciding a

similar issue considered the provisions of the Local Council Courts Act and Section 76A of the Land Amendment Act 2004 which gave Local Council II courts powers to handle Land matters as courts of first instance. He found that; ***“There appears to be concurrent jurisdiction in land matters given both the LC II court under the Land Amendment Act and LC I courts under the Local Council Act because the latter Act did not expressly repeal the former, Section 10 of the Local council courts Act commences thus Subject to the provisions of this Act and any other law every Local Council Court shall have jurisdiction for trial and determination of matters relating to Land. One may argue that Section 76A of the Land Act is “any other written law” which is still in force since it was not specifically repealed by the Local council court’s Act which is the Later statute but this is likely to cause confusion and absurdities in view of the third schedule to the Local Council Court’s Act which gives the Local council court’s jurisdiction to Handle civil disputes governed by customary Law and disputes in respect of Land. The Local Council Courts Act goes ahead to provide that such disputes have to commence***

*Handwritten signature*

***in the lowest council court which is a village court. It is my considered view that this absurdity can be resolved by applying the principles of statutory interpretation and rules which govern legislative drafting, It is trite law that where an earlier statute is in conflict with a later one, the later statute prevails. This is a conclusion based on the assumption that the legislature keeps abreast with the needs of the time and is wiser as time passes. (See Uganda Revenue Authority v Uganda Electricity Board HCT-CA-00-2006)”***

24. I concur with the decision of Justice Stephen Musota on the jurisdiction of Local Council Courts especially in entertaining matters in the first instance. This decision was relied on in the case of ***Isoto Angella v Atai Elizabeth MA No 140 of 2022*** where a question as to the jurisdiction of LC II and LC III to entertain matters as courts of first instance arose.

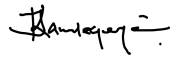
25. In light of the above authorities it is the finding of this court that the LC III Katabi Town Council did not have jurisdiction to entertain the matter as a court of first instance.

26. In the premises, the application succeeds with the following orders;



1. The ruling and orders of the LC III court of Katabi Town Council made on the 14<sup>th</sup> day of August 2023 are hereby set aside for want of jurisdiction.
2. No orders as to costs.

**I SO ORDER.**



**NALUZZE AISHA BATALA**

**JUDGE**

**15/02/2024**