

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT TORORO
HCT-19-CV-MA-0044 OF 2022

MASIGA STEPHEN AND 3
ORS :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

WANYAMA
HUMPREYS:::::::::::::::::::::::::::::::::RESPONDE
NT

RULING

BEFORE: HON. DR. JUSTICE HENRY I KAWESA

This is an application by Notice of Motion premised on **Section 83(b) and 98 of the Civil Procedure Act and Orders 52 Rule 3 of the Civil Procedure Rules.**

The Applicant seeks Orders of revision of the decision by the Busia Chief Magistrate under MSC. No. 11 of 2017.

The grounds are that;

- i. The Applicants filed an application before the Chief Magistrate’s Court of Busia to review a Judgment passed by Buteba LCIII for being a *nullity*.

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- ii. The Chief Magistrate's Court, Busia failed to exercise a Jurisdiction so vested.
- iii. The application was made without undue delay.

The grounds are supported by the affidavit of Hamiro Waiswa which was filed in support of the motion.

I notice from the onset that the Respondent did not file an affidavit in reply. The Respondent did not also file any submissions yet was given a schedule to follow in order to respond to the application.

In the premises, it is trite that as pointed out by Counsel for the Applicants, in reference to the case of **Across Africa Clearing and Forwarding Co. Ltd versus URA & Anor; Misc. Cause No. 03/012** (unreported) following the holding in **Samwiri Massa versus Rose Acen HCCA No.03 of 1976** Court held that;

"where certain facts are sworn in an affidavit, the burden to deny them is on the other party and if he does not, they are presumed to have been accepted and the deponent need not raise them again but if they are re-disputed then he has to defend them"

In this case the facts sworn by Hamiro Waswa for the Applicant, have not been rebutted by the Respondent, and are therefore deemed as accepted by the Respondent.

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The arguments raised in the application by Counsel for the Applicant are therefore noted as proved. The application satisfies the provisions of **Section 83(b) of the Civil Procedure Act**.

The Law regarding the Jurisdiction of LC Courts having been decided on by the *supreme Court* under the case of **Major Rubaramira Ruranga versus AG. & Ors Constitution Petition No. 21 of 2006**, the Court outlawed the handling of land disputes by Local Council Courts under circumstances akin to the one under which this application relates.

I therefore agree with Counsel for the Applicant that an illegality was committed by the LCIII Court of Buteba for passing a Judgment without Jurisdiction. The Chief Magistrate's Court of Busia therefore acted in error for having failed to exercise the requisite Jurisdiction to revise the said error-vide the application under MSC. No. 11/2017.

An illegality was therefore committed as per **Makula International versus Cardinal Wamala Nsubuga & Anor; [1982] HCB11** where Court's decision was that;

"Once an illegality is brought to the attention of Court, it cannot be allowed to stand".

In view of the above, under **Sections 83** and **Section 98 of the Civil Procedure Act**, this Court invokes its revisionary

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Powers and holds that the proceedings of Buteba LCIII Court are hereby set aside for being illegal and without the force of law.

The order of the Chief Magistrate – Busia upholding the same LCIII. Judgment are also set aside for being erroneous and without force of law.

This application is proved and is granted as prayed with costs.

I so order.

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Hon. Dr. Henry I Kawesa

JUDGE

14/07/23