

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

CIVIL MISC APPLICATION NO. 054 OF 2014

ARISING FROM MA. NO. 182/2010

ARISING FROM LC II JUDGMENT DATED 1/5/2010 OF AMAR LOCAL COUNCIL II

OCITTI BWOMONO :::APPELLANT

VERSUS

OKELLO OCEN :::RESPONDENT

BEFORE: HON. LADY JUSTICE MARGARET MUTONYI

RULING

This ruling is in respect of an application brought by Notice of Motion under S. 83 and 98 of the CPA and Order 52 rules 1, 2, and 3 of the Civil Procedure Rules seeking for Revision Order of the Chief Magistrate’s ruling in Misc. Application No. 182/2010 and the LC II Court Judgment of LC II of Amar Local Council II Court of Koch Goma Sub county Nwoya District.

The grounds of the application are contained in the Notice of Motion supported by the affidavit of the applicant Ocitti Bwomono. Council Louise Odongo filed written submissions which are on record and court will refer to them as and when necessary.

Counsel Moses Oyet for the Respondent was supposed to file a response to the applicant’s written submission but he did not. I will use the affidavit in reply to resolve this matter, since the date for ruling was already set and this court does not condone delays caused by counsel.

Brief facts of the case

The brief facts of this case is that Okello Ocen filed a case before LC II of Amar on 1/5/2010.

Court proceeded exparte as the court of first instance and thereafter the respondent filed MA. No.182 of 2010 before the Chief Magistrate for execution. The application was allowed and execution took place. His argument is that the applicant was never served and the court did not have jurisdiction.

The issue for courts determination is whether this is a fit and proper case for a Revisional Order.

The Law Applicable

S. 83 of the Civil Procedure Act 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 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 order in it as it thinks fit”

Before the High Court can exercise its revisional powers under the above section, the trial judge has the duty to examine the record of the lower court or courts for the sole purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the irregularity of any proceedings before the High court.

Both parties here were given an opportunity to be heard.

The respondent in his affidavit in reply dated 2/9/2014 stated under paragraph 3 that “ *the application has no legal basis premised on the fact that I and the applicant had a matter before Local Council II of Amar parish where the applicant was summoned before the LC II of Amar but he failed or refused to appear, thus the court on the 1/5/2010 ruled in my favour against the applicant and the applicant never appealed against that decision (A copy of the LC II ruling is hereto attached and marked Annexure D”*).

He also attached a copy of a letter notifying the Applicant of the ruling which was marked as annexure D2. Under paragraph 4 of his affidavit and a copy of the order of the chief Magistrate under paragraph 5 which he marked as annexure D3.

The judicial power of the Local Council Courts is derived from the Local Council Courts Act of 2006 which act came into force on 8/6/2006 S. 10(1) (e) of the LCCA provides that subject to the provisions of this Act and any other written Law, every Local Council court shall have jurisdiction for the trial and determination.... (e) of matters relating to land” and **S. 11(1) provides that 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.

S. 14 of the same Act provides for institution of Civil Proceedings. The complainant states to the chairperson the nature of the claim and the relief sought and if it is oral, it has to be reduced into writing and signed by the claimant and the chairperson countersigns.

After the statement of the claim is filed a date for the hearing of the case is fixed. Under S. 15(2) it is provided “*the chairperson shall cause summons to be served on the claimant and the defendant requiring them to attend the court at the time and place specified in the summons for the hearing of the case and the summons shall be substantially as set out in form A in the fourth schedule to this Act*”

But incase the court does not issue a summon, the defendant can be summoned orally but whoever makes that oral summon must be accompanied with a witness.

The above laid down procedure by statute clearly shows that matters before an LC Court commences by a complaint which must be dated, signed by the complainant and counter signed by the chairperson. S. 22(3) of the LCCA provides for the records of the court.

The court has to keep the following records

- (a) The serial number of the case.
- (b)The statement of the claim
- (c)The date of witness summons

(d)The date of hearing of the case

(e)The names and addresses of the claimant and his or her witnesses.

(f)The names and addresses of the defendant and his or her witnesses.

(g)The documentary exhibits if any

(h)The judgment or final orders of the court and the date of the judgment or final orders and others.

Perusal of the lower record of the chief Magistrate reveals the following.

The statement as interpreted signed and stamped by chairman LC II Amar Parish was signed on 1/5/2010. The ruling is also dated 1/5/2010 and hearing of the case was on 1/5/2010.

There is no other statement on record or evidence of any summons on record in accordance with the provisions of the LCCA.

This in essence implies that the Respondent made his statement of claim on 1/5/2010, the court started on 1/5/2010 and concluded its case on 1/5/2010.

This contravenes S. 15(2) of the LCCA and against the principles of natural justice.

The above notwithstanding, S.11 (1) of the LCCA is mandatory every suit shall be instituted in the first instance in a village local council court.

The respondent filed his case in LC II which is not a court of first instance according to the Act which provides for judicial powers of local council court.

This court is aware that the Land Amendment Act 2004 gave LC II courts powers to handle land matters as courts of first instance and it may appear to the ignorant that the two courts have concurrent jurisdiction because the later Act did not expressly repeal S. 76 A (1) of the Land Amendment Act 2004 which provides *“Notwithstanding the provisions of SS.5, 7 and 29 of the executive committee Judicial Powers Act, the parish or word executive committee courts shall be courts of first instance in respect of Land disputes”*.

The chief magistrate, who has supervisory powers over the local council courts under S. 40 of the LCCA, ought to have known that where the above scenario exists, principles of statutory interpretation should apply together with rules governing legislative drafting.

It is trite law that where an earlier statute is in conflict with a later one, the later statute prevails. This is based on the assumption that the legislature keeps abreast with the needs of the time and is wiser as time passes.

This was espoused in the case of **Uganda Revenue Authority vs Uganda Electricity Board HCT-02 - 001 – 2006.**

The assumption that the later statute should prevail dates way back in the 18th century as it was held in the case of *Re Williams (1887) 36.Ch.D 537* at page 578 that “*And it appears to be a constitutional necessity as well as an established rule of construction that the last utterances of the legislative should prevail over earlier statutes inconsistent with it*”

The learned Chief Magistrate ought to have known that the LCII Court did not have jurisdiction in the matter as court of first instance.

It is also believed that the legislature cannot be assumed to have made a mistake while enacting the later Act.

This was the view of Lord Hulsbury in the case **Income Tax vs Pemal (1891)** Ac 531 at 549 where he said “*But I do not think it competent for any court to proceed upon the assumption that the legislature has made a mistake whatever the real fact may be, I think a court of law is bound to proceed on the assumption that the legislature is an ideal person that does not make a mistake*”

The above reasoning of Lord Hulsbury was followed in Supreme Court Civil Appeal No. 1 of 1989. **The Attorney General vs Silver Springs Hotel Ltd and 9 others.**

While there is no express repeal of the powers of the LC II courts under the Land Amendment Act 2004 in the LCCA of 2006, there is implicit or implied repeal thereof rendering the powers of the LC.II courts as courts of first instance in land matters stale which cannot be enforced by any court of law.

I therefore hold that LC II courts no longer have jurisdiction in land matters as courts of first instance and therefore the decision of LC II court of Amar parish made on 1/5/2010 was null and void abinitio.

With the above said, the learned Chief Magistrate failed to exercise his jurisdiction vested in him as he failed to supervise and guide the chairperson LC II court of Amar parish.

Before I take leave of this case, I would wish to make it clear that much as we have the Local Council Courts Act, we do not have Local Council 1 and II courts which are constitutionally and legally constituted.

The former made of constitution, or current if at all they exist was declared unconstitutional in Constitutional Petition No.21/2006 Rubaramira Ruranga Vs, Electoral Commission The Attorney General.

This was way back on 3/4/2007 there has never been any elections of local council executives at the two levels of 1 and II.

Much as we have statutes like the LCCA and the Children's Act which give the Local Council court's jurisdiction over some matters, the courts do not have judicial powers as of now because they have not been fully constituted in accordance with the provisions of the constitution of the Republic of Uganda.

They will have judicial power after the Uganda Electoral Commission conducts the elections of the executive members of the committees. The only court which is constituted under Local Council Courts Act is the LC III which is an appellate court under S. 32(1) (2) (b) of the LCCA 2006.

I do agree with the submission of counsel for the applicant that Amar LC II court had no jurisdiction to adjudicate over this matter as court of first instance rendering their proceedings and judgment a nullity.

The Chief Magistrate upon receipt of the application for execution should have exercised his jurisdiction under S. 83 (a) of the Civil Procedure Act by forwarding the file for Revision.

The learned Chief Magistrate did not have a legal judgment to execute. The Chief Magistrate is obliged under the law to ensure the legality, regularity, propriety and fairness of the LC court before allowing execution of its orders. Even if S.22 (5) of the LCCA is to be applied, which provides as follows, “ *At the hearing of a case in a town, division or sub county local council court whether sitting as an original or appellate court, a summary of the evidence given by each person shall be recorded separately*” it would be erroneous interpretation, if the court is to think that LC.II or parish courts have concurrent jurisdiction with LC I as courts of first instance in land matters S. 22(5) has to be read together with S.50(1) and 3 of the LCCA.

S.50 (1) of the LCCA repealed the Executive Committees Judicial Powers Act and S.50(3) allowed any case pending before a court under the Executive Committees (Judicial Powers) Act at the commencement of the Act to be continued and concluded by that court notwithstanding the repeal of that Act.

This by construction and if not misconstrued means that only pending cases would continue to be handled and not new cases like the case under Revision. By the time the LCCA came into force, the case under consideration was not pending. It is trite law that exercising jurisdiction not vested in court renders the judgment and its orders a null and void and therefore unenforceable.

In view of the above analysis, leaving the order of execution of the LC.II court which acted without jurisdiction on two major grounds to wit

- (1) Being not a court of first instance in land matters
- (2) Being a court not legally constituted as no elections of its executives have taken place since it was pronounced unconstitutional, would be setting a dangerous precedent and promoting abuse of court process and committing judicial suicide as courts of law must maintain jurisprudence.

In the result I allow the application with the following orders.

1. The Chief Magistrate order dated 3/11/2011 is set aside
2. The execution that was done basing on his order and judgment of Amar parish LC II is declared illegal, null and void.

3. The status quo prevailing before Amar parish LC II judgment dated 1/5/2010 between the parties be restored.
4. Costs of this application are awarded to the applicant.
5. Any of the parties is free to institute a fresh suit before a court vested with jurisdiction as there is no formal complaint recognized in law before any court for a retrial.

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Margaret Mutonyi
Judge
8/12/2014.

8/12/2014

Both parties present

Ocorobiya Lloyd holding brief or Louis Odongo

Counsel for respondent Oyet is absent.

Anna for clerk.

Court: Ruling read and delivered in the presence of the above.

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Margaret Mutonyi
Judge
8/12/2014