

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
MISC APPLICATION No 35 OF 2012
(ARISING FROM MISC. APPLICATION No. 37 of 2010)
ARISING FROM JUDGMENT OF LC II COURT OF GIRIGIRI PARISH
– MAYUGE DISTRICT)**

PAUL MUWANGALA ==== **APPELLANTS**

VERSUS

KAWANGUZI SWAIBU ==== **RESPONDENTS**

BEFORE: HON. JUSTICE MICHAEL ELUBU

RULING

This is an application brought by Notice of Motion under S.83 of the Civil Procedure Act and Order 52 rr 1 & 3 of the Civil Procedure Rules SI 71-1.

The applicant, **PAUL MUWANGALA**, seeks the following orders against **KAWANGUZI SWAIBU**:

1. The judgment passed against the applicant in the LC II court of Girigiri – Mayuge on the 1st of December 2007 be set aside.
2. The order that the land belongs to the applicant be set aside.
3. The execution of the Order of LC II Court Girigiri against the applicant be set aside.
4. The costs of this application be provided for.

There are several grounds on which the application is based which have been particularised in the affidavit of the applicant deposed on the 10th of February

2012. He states that he filed a land case in the LC I Court of Girigiri which he won. The respondent appealed the decision to the LC II Court of Girigiri which decided in the respondents favour. An appeal filed by the applicant in the LC III Court has never been heard. During that time the respondent applied to the Chief Magistrates Court of Iganga for a grant of orders to execute and enforce the judgment of the LC II Court and the Chief Magistrate ordered for the enforcement of the said judgments. The applicant avers that the Chief magistrate acted with material irregularity and illegally when he made the said order. The applicant's states that the LC I and II courts had no jurisdiction to entertain the land dispute between the parties.

The respondent opposes this application. He deposes that it is an abuse of the Court process. That the Chief Magistrate acted within the law when he granted the orders to execute the Judgment of the LC II Court. In addition, that the applicant has never appealed the Judgment of the LC II Court. He adds that the application is barred in law, incurably defective and lacks merit for the consideration of this court. It is *res judicata*. That the applicant appealed against the decision of the Chief Magistrate to the High Court in Civil Appeal No. 87 of 2011 but the appeal was struck out.

The background to this application is that the parties have a dispute over the ownership of land located at Busu village in Nangabo parish Buwaya Sub County in Mayuge district. The applicant filed a suit in the LC I court as seen in the affidavit above. The applicant was successful in the LC I court. The matter was then heard by the LC II which delivered its decision in favour of the respondent on the 24th of November 2007.

The respondent applied to the Chief Magistrate for execution and enforcement of the judgment. That application was granted on the 10th of November 2011.

At hearing of the present application Mr Jacob Osillo represented the applicant while Mr Kikwe Allan appeared for the respondent. Counsel on both sides made very able arguments on behalf of their clients but I shall not reproduce them here.

The thrust of the applicant's argument is that the LC I and LC II Courts lacked the mandate to handle the parent suit at the time they determined it.

The facts in this matter are clear. The LC II Court rendered its decision on the 24th of November 2007.

The Court of Appeal has had occasion to rule on a similar matter in **Nalongo Burashe vs Kekitiibwa Mangadalena COA No. 89 of 2011** where a land dispute before a parish LC II Court was, in 2009, determined in favour of one of the parties. An application was then made to The Chief Magistrate's court praying for execution of that Judgment. The Chief magistrate dismissed the application contending the LC II Court had no jurisdiction to entertain the suit. An application, which challenged the decision of the Chief Magistrate, was lodged in the High Court. The ruling of the High Court was that the LC II Court had original jurisdiction to try the suit. The appellants being dissatisfied with the finding of the High Court appealed to the Court of Appeal which held,

'The village, parish and ward councils which were in place at the time and which remain in place were not and are not validly constituted, their members having been elected under the movement political system that ceased to exist after the amendment of The Constitution in 2005...

It means therefore that the decision from which this appeal emanates was made by a court that was not legally constituted at the time. That decision is no decision at all and is devoid of any force of law.

...the decision and orders of the LC II executive committee court ... dated 24 April 2009 are accordingly set aside on account that, the court was not legally in office as the elective term of all its members had expired.'

In the same way the decision in this instant case where the parties are in contest over the decision emanating from the LC II Court in Girigiri suffers the same fate. Like all other LCs at Parish and Village level, their mandate had expired at the time they rendered their decision on the 24th of November 2007. Their decision, being delivered by a court without the legal mandate to issue it, is a nullity, and is accordingly set aside.

It would therefore mean all subsequent decisions that emanated from that decision of the LC II Court are also a nullity and are hereby set aside.

The parties in this matter are at liberty to institute fresh proceedings in a Court of competent jurisdiction if they so wish.

Additionally, there shall be no order as to costs. This application has been determined purely on a technical point for which the parties, when they were before the LC II Court may have had no cognisance of.



Michael Elubu

Judge

13.12.2017

