

matter for determination simply is customary succession which, unfortunately, is being obscured by lower courts erroneous proceedings and Advocates legalistic submissions that do not concentrate on the root of the matter. I have read the lengthy submissions and academic arguments raised by the Advocates in this case that make matters even more complicated for these rural litigants who are only interested in effectual and practical resolution of their dispute. For these reasons I will concentrate my decision on the aspects of the case that promote justice and provide remedies that will redirect the case on a course that will enable the parties to resolve the issues. For this reason I have disregarded most of the advocates' unhelpful submissions.

I have examined the LC II Court proceedings and judgments. On 2nd June, 2006 LC II Court heard ex-parte, the case of KARIMUNDA & 2 OTHERS VS KIRANGI VANANSIO based on various letters. There was no evidence of service of summons or hearing Notices. The contents of the letters relied upon are not made part of the court record, clearly the Defendant Kirangi was not accorded the right to be heard (see Annexure 'B') to this application. In un clear event on 4th November, 2006 the same court in a case of KIRANGI (see Annexure I to this application, judgment was entered in favour of Kirangi against KINYONGORE and BABIGAMBA who are party to the first case above. The two decisions revolve over the same or related pieces of land which should be adjudicated by a court with competent jurisdiction after hearing both sides. It is a cardinal rule of natural justice and central in our Justice system that no man shall be condemn unheard. Fair trial demands that both sides be heard. In **Breen Vs Amlgamented Engineering union (1971) 1 AU E.R 1148** Lord Denning stated;

"It is now settled that a statutory body which is entrusted by statute with discretion must act fairly. It does not matter whether its functions are described as judicial or quasi-judicial on the other hand..... it must act fairly. It must in a proper case give a chance to be heard."

In the case of **General Medical Council Vs Spark man [1943] 2 AU. E.R 337.**

Lord Wright had the following to say;

“If the principles of natural justice are violated in respect of any decision, it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision.”

In view of the above authorities applied to the instant case, the LC II decision complained of by KIRANGI VANANSIO was arrived at in breach of the natural justice that both sides must be heard or be given opportunity to be heard consequently it was no valid decision and shall be set aside with all its consequential orders and their executions.

In view of the above decisions it is further ordered that in order to avoid similar mix up and confusion in determination of the rights of the parties. It is ordered that matters related with the distribution of this contentious estate of late Rwabinumi Bernard be filed for a judication by The Magistrate Grade I under whose geographic jurisdiction the estate falls. Considering that this is a family dispute condemning any of the parties to costs of these proceedings would be aggravating matters. Therefore each party shall bear his costs in this application and lower courts' proceedings.

Dated at Kabale this **21st** day of **September, 2012**.

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J.W. KWESIGA

JUDGE

21/9/2012

In presence of:

Rev. Bikangiso for the Respondent.

Respondent absent.

Applicant and his Advocate absent.

Mr. Joshua Musinguzi- Court-Clerk.