

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KABALE**

**HIGH COURT CIVIL REVISION 003/2008**  
***(FROM LC II COURT OF BIKUNGU NO. 4 OF 2007)***

ESAU BARARA:..... APPLICANT

**VERSUS**

NYAKAMAGA :.....RESPONDENT

**BEFORE HON. MR. JUSTICE J.W. KWESIGA**

**REVISION ORDER**

This application was made under Section 83 of the Civil Procedure Act seeking a revision order of this court arising from the proceedings and Judgment of LC II Court of Bikurungu LC II, Bwambara, Kanungu District.

The application has tow grounds, namely;

1. That the LC II Court exercised Jurisdiction not vested in it in law.

2. That the committee acted illegally, or with material irregularity or injustice.

The Application is supported by an affidavit sworn by **ESAU BARARA** the applicant. Most of what is stated in the affidavit is a narration of the back ground of the application. The material grounds are found in paragraph 4, 9, 10 and 12 of the affidavit. The summary of these paragraph shows that the subject matter of this disputed had been heard and decided in LC I court of Nyamitoma on 13<sup>th</sup> May 2007 and execution of LC I courts order was done on 27<sup>th</sup> May 2007.

The Respondent instituted proceedings before LC II Court which were decided exparte. The proceedings were filed on 18<sup>th</sup> May, 2007 and decided on 22<sup>nd</sup> September, 2007 (according to the stamp and date on the Judgment).

The Applicant in this matter stated that he was un aware of these proceedings because he was never served. The LC II Judgment states that he was called to appear but he refused. Whereas the LC courts are courts handled by lay persons they are not expected to have detailed and elaborate procedures as expected of the courts of Judicature. However, their proceedings must comply to the fundermental principles of fair trial. Fair trial demands that each party should be given opportunity to be heard. No man shall be condemned unheard and this can be best avoided by allowing

Defendants to present their cases before decisions are made. I have studied the record of LC II Court in question and all I found was a copy of the Judgment. There was no record of the proceedings yet the Judgment makes reference to a visit to the **Locus in quo.** Before any Judgment can be reached, there must be a record showing the evidence given by named witnesses for both sides or those called by the Plaintiff if the matter is ex-parte. The Judgment must show the basis of the decision, by reference to the witnesses' evidence. The moment the committee/Court visits the Locus in quo, evidence must be recorded and the witness's particulars must be stated. It is clear that LC II proceeded as a court of first instance and not as an appellate court which it is supposed to be. This was an irregularity given the fact that there had been proceedings before LC I. The LC II had no jurisdiction to hear the suit as a court of first instance when LC I had already decided the same case whichever way it did. If anybody was aggrieved by LC I Judgment, the proceedings before LC II could only be by way of appeal. The circumstances of the instant case do not qualify the LC II to be a court of original jurisdiction.

Both LC I and LC II courts have jurisdiction to try and determine cases relating to land disputes relation to customary ownership and succession. The defect in the instant case is that LC II heard had no powers to hear a case denovo when it had just been heard and determined in the LC I court. Further irregularities are reflected by the Judgment which states that some Bataka in the area testified in favour of the Respondent without stating their names or their evidence. The Respondents submissions agree that there were no

proceedings at from which the question judgment is derived. On this basis this application shall succeed. The LC courts must comply with the basic elements Judgment writing;

- (a) There should be a record of the Plaintiffs' and witnesses' evidence.
- (b) The Defendant should be given opportunity to testify and call witnesses.
- (c) Each party should be given opportunity to cross-examine the opponent's witnesses.
- (d) The Judgment must only be made by reviewing the evidence as a whole giving reasons for accepting or rejecting evidence and finally reasons must be recorded why the Judgment has been given for one party and not the other.
- (e) The dissatisfactory party must be given opportunity to appeal to the next level. The appellate LC court must make its Judgment by reviewing the evidence and Judgment of the Lower Court.

In the instant case, the LC II Judgment on record is not backed by the Judgment or LC I, there are no proceedings recorded before the LC II court and for this reason there could not be a valid Judgment of LC II that this court can sustain. All the proceedings that took place before LC I and LC II are hereby set-

aside due to the irregularities that are so gross and contravene the principles of fair trial. Given that this court finds it imperative to order for retrial to avoid influencing the trial court. Only examination of procedural errors has been made and the merits have been left to be covered by the trial court. It is further ordered that the status quo obtaining from the execution of LC I court decision dated 27<sup>th</sup> May, 2007 shall be maintained pending determination of the parties rights in a retrial to be done devovo before Magistrate Grade I at Kanungu.

.....

**J.W. KWESIGA**

**JUDGE**

**13-3-2012**

**In presence of:**

Mr. Beitwenda for Respondent.

Both parties in Court.