

(Arising from Hoima, Civil Suit No.18 of 2006)

(Arising from Misc. Application No. 20 of 2005)

(Arising from Buhanka Sub county L.C III Court, Case No.03 of 2001)

RULING

[2] The application is supported by the affidavit of **Nyamaizi Teopista**, the Applicant, wherein the grounds of the application are set out and briefly are as follows;

1. *That the Magistrate Grade 1 Court sitting at Hoima found that the orders passed by the L.C III Court of Buhanika in Case No.03 of 2001 were illegal but declined to determine Civil Suit No.0018 of 2016 on its merits on ground that the case was res judicata and it was not possessed with jurisdiction to review the illegal decision and orders of the L.C III Court of Buhanika in Case No.03 of 2001.*
2. *That the Chief Magistrate court of Masindi issued execution orders arising out of the illegal decision and orders of the L.C III Court of Buhanika.*
3. *That the matter was heard and entertained by the LC III Court of Buhanika Sub county while exercising original jurisdiction it was not possessed of and at the time when the District Land Tribunals were the only bodies possessed with jurisdiction to hear and determine Land related disputes.*
4. *That the Judgment and orders entered by the Magistrate's Grade 1 Court Hoima in Civil Suit No.018 of 2006 be revised for failure on part of the court to exercise jurisdiction vested in it.*
5. *That the Judgment and orders entered by Buhanika Sub county L.C III Court in Civil Suit No.03 of 2001 be revised for exercising jurisdiction not vested in it by law.*
6. *That the execution orders (in Buhanika Sub county Local L.C III Court in Civil Suit No.03 of 2001) entered by Chief Magistrates Court, Hoima in Miscellaneous Application No.20 of 2005 be revised for court having acted in the exercise of its jurisdiction illegally or with injustice.*
7. *That the decision of the Buhanika Sub county L.C III Court in civil suit No.03 of 2001, the order of the Chief Magistrates Court sitting at Hoima in Miscellaneous Application No.20 of 2005 and the decision of the Magistrate Grade 1 Court sitting at Hoima in Civil Suit No.0018 of 2016 had the effect of depriving the Applicant of her interest in the subject matter comprised of approximately 6 acres.*
8. *That it is just and equitable that the judgment and orders of the said subordinate courts be revised and the said orders be set aside.*

- [3] The Application is opposed by the Respondent vide the affidavit in reply deposed by **Rev.Peter Kanyemera**, a Reverend for the Respondent attached to Mparo church and the grounds therein briefly are;
1. *That the Application is misconceived, brought in bad faith and in total abuse of court process as it contains falsehoods that make it suspect and defective for which he prays that it be dismissed with costs.*
 2. *That the Application and supporting affidavit do not disclose a cause of action warranting court to grant the orders prayed for by the Applicant.*
 3. *That the Application is a legal misfit as the Applicant is seeking court to alter and attack judicial reasoning in the judgment of the Magistrate Grade 1.*
 4. *That the Applicant is guilty of dilatory conduct.*
 5. *That no damage or loss shall befall the Applicant by this court upholding the decision of the Magistrate Grade 1 of Hoima in Civil Suit No.18 of 2016 (sic).*
 6. *That the Application is brewed fertile imagination by the Applicant to deprive the Respondent of its interest in the suit land.*
 7. *That it is fair, just and equitable that this Application be dismissed with costs.*

Background of the application

- [4] The Applicant/plaintiff filed **C.S No.03 of 2001** before the RC I Mparo West Court. The matter was referred to the L.C III Court of Buhnika which decided the case in favour of the Respondent/defendant. The Chief Magistrate endorsed execution of the orders in the L.C III Court **C.S No.03 of 2001** vide **Misc. Application No.20 of 2005** whereby the Applicant was evicted from the suit property.
- [5] Instead of preferring an appeal against the L.C III Buhnika judgment, the Applicant/plaintiff filed a fresh suit against the Respondent/defendant in the Chief Magistrate's court vide **Civil Suit No. 18 of 2006** for inter alia, a declaration that she is the bonafide occupant of land measuring approximately 20 acres at Mparo Division. The trial Magistrate Grade 1 dismissed the suit on the ground that it was barred by the doctrine of *Res judicata*.

- [6] The Applicant being dissatisfied and or aggrieved with the judgment and execution orders of the lower court in **C.S No.18 of 2006** and **C.S No.03 of 2001** with the accompanying execution vide **Misc. Application No.20 of 2005**, filed the instant application seeking for revision of the said judgment and execution orders in **C.S No.03 of 2001**, **C.S No.18 of 2006** and **Misc. Application No.20 of 2005** respectively.

Counsel legal representation

- [7] In the instant application, the Applicant was represented by **Counsel Edwin Mutaryeba of Justice Centres Uganda, Hoima** while the Respondent was represented by **Counsel Suzan Zemei of M/s Zemei, Aber Law Chambers, Masindi**. Both counsel filed their respective submissions as permitted by this court for consideration in the determination of this application.

[8] Issues for determination

1. Whether the L.C III Court of Buhanika Sub county exercised a jurisdiction vested in it when it entertained and adjudicated upon C.S No. 03 of 2001.
2. Whether the Chief Magistrate's Court of Hoima failed to exercise a jurisdiction vested in it when it ordered or endorsed the execution of the orders of the Buhanika L.C III C.S No.03 of 2001.
3. Whether the Magistrate Grade 1 Hoima failed to exercise a jurisdiction vested in court when she declined to make a finding on the merits of the case in C.S No.18 of 2006 on the ground that the matter was res judicata.
4. What remedies are available to the parties.

Determination of the Application

- [9] Counsel for the Applicant submitted that the trial L.C III Court at Buhanika while exercising original jurisdiction entertained fresh evidence and heard **C.S No.03 of 2001** which was decided in favour of the Respondent/defendant. That the court issued orders to evict the applicant and the orders were endorsed by the Chief Magistrate's court at Hoima leading to the unfortunate eviction of the applicant from the disputed land and destruction of her property.

- [10] Counsel further submitted that in a bid to recover her land, the applicant filed in the Magistrate's court at Hoima **C.S No.18 of 2006** which was dismissed by the trial Magistrate who agreed that the **Buhanika L.C III Court** had no original jurisdiction to entertain the matter but declined to hear the matter that it was res judicata and that it had no jurisdiction to set aside the L.CIII Court decision because the Chief Magistrate's court had confirmed the decision by endorsing its warrant and or order for vacant position.
- [11] Counsel concluded that the matter having originated from RC 1 Court, it should have been appealed to the RC II Court but the Respondent filed a fresh suit in the **L.CIII Court at Buhanika** which lacked original jurisdiction to hear the matter. That the Chief Magistrate wrongly endorsed orders of the L.C III Court's judgment whose decision was null and void, hence this application for revision to set aside the judgment and orders therefrom.
- [12] On the other hand, it is the submission of Counsel for the Respondent that the Applicant ought to have appealed against the judgment and eviction orders of the Chief Magistrate's court instead of opting for revision of the decision by the Magistrate Grade 1 who dismissed the suit for being res judicata. Counsel proceeded to justify the trial Magistrate's finding that the court had no jurisdiction to temper with the decision/orders of the Chief Magistrate. That the Applicant had the remedy of appealing the decision of the L.C III Court to the Chief Magistrate's court at Hoima but not to file a fresh suit, which the Applicant did and that the same was rightly dismissed for being res judicata.
- [13] On the jurisdiction of the L.CIII Court to entertain the matter, counsel for the Respondent submitted that the L.C III Court was within its mandate to listen to the matter before it and came to a right decision against the applicant who conceded and never appealed against the orders. Counsel concluded her submissions that the right position is that the case was heard by the R.C I , R.C II, and then L.C III Court as mandated by the law and therefore the right action for the Applicant ought to have been an appeal against the L.C III judgment and not revision in this court.
- [14] **Section 83 CPA** 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

(c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice.”

Considering the submissions of both counsel and having perused the entire record, the Applicant seeks to revise the decision of the L.C III Court, decision of the Magistrate Grade One and the order/warrant of execution endorsed by the Chief Magistrate at Hoima. It appears the above **section on revision** applies only to records of Magistrate courts and not L.C III Courts; See **Wadri & Ors Vs Dranila (Civil Revision) No. 7 of 2019 [2020] UGHCCD 68**. Revision entails a re-examination or careful review for correction or improvement, of a decision of a Magistrate’s court, after satisfying oneself as to the correctness, legality or propriety of any finding, order or any other decision and the irregularity of any proceedings of a Magistrate’s court.

Issue No.1: Whether the L.C III Court of Buhanika Sub county exercised a jurisdiction vested in it when it entertained and adjudicated upon C.S No. 03 of 2001.

Issue No.2. Whether the Chief Magistrate’s Court of Hoima failed to exercise a jurisdiction vested in it when it endorsed or ordered the execution of the orders of the Buhanika L.C III C.S No.03 of 2001.

[15] It is trite law that the jurisdiction of courts is a creature of statute. A court cannot exercise a jurisdiction that is not conferred upon it by law. Therefore, whatever a court purports to do without jurisdiction is a nullity *ab initio*; **Desai Vs Warsaw (1967) EA 351**. It is therefore settled law that a judgment of a court without jurisdiction is a nullity and a person affected by it is entitled to have it set aside; **Peter Mugoya Vs James Gidudu & Anor [1991] HCB 63**. Where a trial court has not exercised its original jurisdiction over a matter, there certainly cannot arise a valid appeal on the merits.

[16] In this case, the jurisdiction of the R.C Courts as they were then called was provided for under **Ss. 7 and 28(2) of the Executive Committees (Judicial Powers) Act, 2000** which provided that;

Every suit shall be instituted in a court within the local limits

of whose jurisdiction the defendant actually resides or where the cause of action wholly or in part arises, and on appeal, an appeal would lie from the judgments and orders of a village executive committee court to a parish executive committee court, then from the judgments and orders of a parish executive committee court to sub county executive committee court.

[17] In the present case, it is apparent that when **Ss. 7 & 28 of the Act** read together, the sub county executive committee court would not have original jurisdiction but appellate jurisdiction. There is evidence that the **R.C I Court of Mparo West** where the impugned suit was first reported did not adjudicate over the matter but merely referred it to the **L.C III Court of Buhnika** which entertained and adjudicated over the matter. It follows therefore the **Buhnika L.C III Court** entertained and adjudicated the suit referred to it by the R.C I Court and decreed the suit land to the Respondent without jurisdiction. It exercised an original jurisdiction which it did not have. Nevertheless, upon conclusion of the suit, it referred the matter to the Chief Magistrate for execution and the Chief Magistrate endorsed or ordered the execution of the orders vide **M.A No.20/2005**. It is my view, that the Chief Magistrate was restricted to the lawfulness or propriety of the proceedings and judgment of the **Buhnika L.C III Court**. The Chief Magistrate's court and the H.C were vested with supervisory powers over the executive courts by virtue of **Section 32 of the Executive Committee (Judicial Powers) Act (supra)** and therefore, the Chief Magistrate had a legal duty to first consider the lawfulness and propriety of the L.C III orders before ordering for execution of such orders. In this case, the Chief Magistrate failed to exercise a jurisdiction vested in him and ended up proceeding to order execution of orders that were null and void hence I find, proceeded with material irregularity.

[18] I accordingly find that the Chief Magistrate erred when he ordered for execution of the orders arising from defective proceedings of the L.C III Court which illegally heard and considered the matter as a court of first instance. The Chief Magistrate therefore exercised his jurisdiction with material irregularity and injustice.

[19] As a result of the foregoing, I find the decision of the **L.C III Court of Buhanika** null and void for lack of requisite original jurisdiction to hear the dispute. It exercised a jurisdiction not vested in it when it entertained and adjudicated upon **C.S No.03 /2001**. The Chief Magistrate's endorsement of the orders of the **L.C III Court of Buhanika** was arrived at by a court without competent jurisdiction and therefore a material irregularity on the ground that it confirmed null and void orders.

Issue No.3: Whether the Magistrate Grade 1 Hoima failed to exercise a jurisdiction vested in court when she declined to make a finding on the merits of the case in C.S No.18 of 2006 on the ground that the matter was res judicata.

[20] *Res judicata* is a plea of jurisdiction, in that **S.7 of the CPA** bars any court from trying a suit or an issue that is *res judicata*. Courts therefore have no jurisdiction to try a matter that is *res judicata*; **Maniraguha Gashumba Vs Sam Nkundiye Civil Appeal No. 23/2005 (CA)**.

In **Mansukhlal Ramji Karia & anor Vs A.G & 2 Ors, S.C.C.A No.201/2002 [2004] UGSC 32 reported (2005) 1 ULR 157, 3** conditions must exist before the doctrine of *res judicata* can apply.

1. There have to be a former suit or issue **decided by a competent court** (emphasis).
2. The matter in dispute in the former suit between the parties must also be directly and substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar.
3. The parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title.

[21] In the instant case, the trial Magistrate in **C.S No.18/2006** based her decision to dismiss the Applicant's suit on the ground that it was **res judicata** since it had earlier on been adjudicated upon by the **L.C III Court of Buhanika** and its execution ordered by the Chief Magistrate. However as I have already found, the L.C III Court decision lacked the requisite jurisdiction, it was therefore, not a competent court, and its decision could not therefore bar the Applicant's suit as being *res judicata*. The learned trial Magistrate in the circumstances exercised her jurisdiction with material irregularity or injustice when she dismissed the suit on the grounds that it was *res judicata*. The matter

was not *res judicata* since the L.C III Buhanka court acted without jurisdiction.

Issue No.4: What remedies are available to the parties.

- [22] In the present application, it is apparent that the impugned execution orders were endorsed or made by the Chief Magistrate on **13/9/2005** (As per annexure 'A3' to the affidavit in support of the Application). The Applicant's **C.S No.18/2006** for recovery of the suit land which had been decreed to the Respondent by the L.C III Court and execution concluded, was filed on **03/4/2006**. Its judgment was delivered on **26/9/2017** and the present application was filed on **17th/10/2017**. It cannot in the premises be taken that there has been inordinate delay on the part of the Applicant.
- [23] Both the L.C III Court decision that decreed the suit land to the Respondent whose execution was endorsed by the Chief Magistrate were marred with material irregularities and injustice as was the dismissal of the Applicant's **C.S No.18/2006** by the Grade 1 Magistrate on the ground that it was barred by the doctrine of *res judicata*. It is therefore just and equitable that these decisions be revised.
- [24] In the premises, I substitute the orders of the Chief Magistrate with an order quashing the **L.C III of Buhanka Court** proceedings and the accompanying Chief Magistrate's execution orders on the ground that the L.C III Court did not have original jurisdiction and set aside the dismissal order of the trial Magistrate Grade 1 in **C.S No.18/2006** on the ground that the suit was not *res judicata* and order its retrial before the Chief Magistrate Hoima. Considering the age of the suit, the Chief Magistrate is urged to consider an expeditious trial of the suit.
- [25] Since the irregularities in the matter at hand were not a result of the parties' involvement or control, no order is made as to costs.

Signed, dated and delivered at Hoima this **20th** day of **January, 2023**.

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Byaruhanga Jesse Rugyema
JUDGE.