

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

HOLDEN AT SOROTI

MISCELLANEOUS APPLICATION NO. 0011/2009

(Arising from Misc. Application 003/2009)

**IN THE MATTER OF S. 36 JUDICATURE ACT, CAP 13 LAWS OF
UGANDA 2000**

AND

**IN THE MATTER OF RULES 6, 7 & 8 OF THE JUDICATURE JUDICIAL
REVIEW RULES, SI 2009 NO. II**

AND

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY
WAY OF CERTIORARI TO CALL AND QUASH THE JUDGMENT OF
LC. II COURT OF ORUNGO PARISH**

AND

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY
WAY**

**OF MANDAMUS DIRECTING THE LC II COURT OF ORUNGO TO
ACT IN ACCORDANCE WITH THE LAW**

HAJJI SEILMAN ETEGUAPPLICANT

VERSUS

- 1. IGONU MAJUMA**
- 2. ESAYU OLEGO ABDULAI.....RESPONDENTS**
- 3. ERWAU DAVID**

BEFORE: HON LADY JUSTICE MARGARET C. OGULI OUMO.

RULING

The applicant brings this application by way of Notice of Motion under S. 36 of the Judicature Act (Cap 13) Rules 6,7,8 of the Judicature (Judicial Review Rules) 2009 for orders that:-

- a) Judicial review to remove to the High Court and quash by way of Certiorari the respondent's original suit in the LC. II Court of Orungo instead of the LC. 1 of Omoratok village.
- b) Judicial review by way of Mandamus directing and ordering the respondents to allow the applicant to appeal to LC. III Court, by forwarding the original file to the appropriate court and/or in the alternative to order a fresh trial in another court of competent jurisdiction.
- c) General damages for the inconvenience suffered by the applicant as a result of the respondents' action against him.
- d) Costs of this application.

The application is supported by the affidavit of the applicant dated 15th September, 2009.

The grounds of the application are briefly as follows:-

- a. That, the respondents filed a suit against the applicant in the LC. II court Orungo Parish instead of LC. 1 Court of Omoratok village.
- b. That the respondents in connivance with the LC.II court officials denied the applicant the record of proceedings and the judgment to process the appeal.
- c. That the applicant had tried in vain to process his appeal and this is a violation of his right, as this action might lead to loss of his property.
- d. The Respondents in connivance with the LC. II Court officials violated the principles of natural justice and fairness and acted in bad faith when they

filed a suit against the applicant and failing to avail him the record of the same, thereby denying the right to be heard.

- e. It is a just and equitable that the respondent's decision and action of the LC.II court of Orungo Parish be removed to the High Court and quashed by way of judicial review of Certiorari and Mandamus as these orders are necessary for the ends of justice and for costs and interest.

At the hearing of the application, the applicants were represented by Okuku while the respondent by Mr. Ogire. Mr. Okuku made his presentation orally in court while Mr. Ogire filed his written submissions later.

Mr. Okuku Learned counsel for the applicant submitted that the Application is for Certiorari to quash the proceedings in a land dispute evidenced by the LC. 2 court Orungo, Amuria which was filed in that court as a court of first instance in 2008.

Mr. Okuku urged that the Court did not have the jurisdiction to try land disputes of first instance.

That Rule 2 of the Local Council Courts Act, 2000, provides that, a land dispute must be instituted in an LC. 1 Court and the Local Council Courts Act commenced on 1st June, 2000.

That the matter was filed in the LC.2 court in 2008.

Mr. Okuku submit that in the affidavit in reply, the 1st respondent deposed that, the Land Amendment Act of 2004, did not authorize the commencement of land disputes in LC.2 Courts (See paragraph 3 of the affidavit of the 1st Respondent).

Mr. Okuku submitted that where a new Act provides the same situation and there is a provision for it under the law, the provision in the new law prevails. That the institution of the land disputes under the old Act of 2004 was in LC.2 and in the

LC.1 in the new Act. He cited the Supreme Court Civil Appeal No 1 of 1989, Attorney General vs EADNER Springs and 9 others where it was held that where a similar matter provided for in an Act, and the new Act, the provisions of the new Act prevails. That it was referred in the case of **Uganda Revenue Authority VS Uganda Electricity Board. Civil Appeal no. 1 of 2001** where it was held that is trite law that that where a matter in act conflicts with in with an earlier one, the new one prevails.

That the court did not have the jurisdiction to hear and determine as an original court the land dispute. That the court should order a trial of hearing in a court of competent jurisdiction.

He Counsel also prayed for costs since the respondents filed the case in the LC. Court of Orungo.

In reply Mr. Ogire Counsel for the respondents contended that the application has no merit and should therefore be dismissed with costs.

That the judgment, the LC. II Court made was between two parties that **Igonu Dinah versus Hajji Suleiman Etegu** as per the judgment dated 25/8/2008 in which the committee concluded that:-

1. Therefore the committee has given back the land which is shown in the attached sketch map to the mother Igonu Dinah the mother of Olego Abdalai Esayu who are members of Ibwalatok clan as part of the written submissions.”

That this application joins three parties as respondents and the 2nd and 3rd Respondents were not a party in the LC. II court proceedings and therefore being introduced as foreigners in the application.

That the 2nd and 3rd respondents should be excused and their names be struck off in this application with costs.

Since they were not parties in the original suit of the LC.II Court as per paragraph 4 of both the 2nd and 3rd respondent's affidavits in reply as they were not parties in suit No. 7 of 2008 in the LC. Court. That their names should be struck off with costs to the applicant since they are wrongfully and maliciously joined in the application and is evident by the judgment of the afore mentioned suit.

Mr. Ogire further contended that there is glaring evidence on record to the effect that there LC. 1 Court of Omoratok village by a letter dated 16/3/2008 addressed to the Chairperson LC. II court of Orungo Parish, Orungo sub county and declined to handle the land disputes at the time and the therefore forwarded the said matter to the LC.II Court for normal proceedings by the same. (See Annexure "B" to the written submissions).

That these cases are as a result of the Land Amendment Act 1 of 2004 which the LC.1 court of Omoratok had addressed its mind to.

That in section 30 (1) of the Land Amendment Act, it provided that notwithstanding executive committees (judicial powers) Act, the parish or ward committee shall be the court of first instance in respect of land disputes amended by section Annexure "C" to the written submissions".

That the executive committee (Judicial powers) Act was amended by the Local Councils Act Cap. 13 of 2000 and the same parties maintained that no other Land (amendment) Act has followed Act 2004 to oust the jurisdiction of the parish or land committees for LC. Court.

That for Counsel argue that, the Local Councils courts Act, 2006 amended section 30 (1) of the Land Act is misguided missile with the intent of not only misleading honourable court but also misinform the same. That the prevailing Land Act can only be amended by the Land Act but not by the Local Council Courts Act.

That if the intentions of the Legislators at the time of drafting and operationalizing the Local Councils courts Act was to oust the jurisdiction of Land from the Local Council II court, the same should have been made in the said Act but it is evident about land matters that jurisdiction to handle land matters remains and is still in the hands of the LC.II court which the policy act placed in it. As per annexure “ D” to the written submission.

That the case cited by the Counsel is not applicable as there is no conflict between the local Council Act 13 of 2006 and the Land Amendment Act 1 of 2004 in respect of the land matters.

Mr. Ogire contended that, the foregoing is negative as it does not touch the present Act (Land amendments) Act of 2004.

That no evidence was submitted to court to show that, the LC. III court being pointed out here that an appeal now filed by the applicant before wrote to the LC.II Court demanding for the lower court record, a fact indicative of the fact that the averment in both the Notice of Motion and its affidavits in support are full of false hood which this court should not entertain but only blame the applicant for the dilatory conduct.

That if a letter from the LC.III court to the LC.II court had been furnished to this honourable court as evidence; it would be a glaring test that would require the records even from the respondents and the lower court.

Finally, Counsel contended that , the LC.II Orungo Parish was vested with jurisdiction at the time it sat to settle the land dispute between the applicant and the 1st respondent to handle land disputes as court of first instance and not the LC. 1 Court since the land Act and its amendments therein is the parent Act which was the intention of the legislators.

In the instant case, only the first respondent was a party to the original suit in the LC. II Court in Orungo, See affidavit of respondent's No. 2 and 3 were not Therefore I agreeing with Counsel for the respondents that they are being introduced as foreigners in the application and their names should therefore be struck off with costs to the applicant as they are wrongfully joined in the application as co-parties by the judgment of the LC. Court, on court record. Section 13 of the Local Councils Act, Cap. 13 of 2000 however opened up the jurisdiction of the LC. II courts and 30 -- provides inter alia as follows:-

In Section 10 Of the Local Council Court 2000,

“Section 10 provides as follows:-

1. Subject to the provisions of the Act and any other written law, every Local Council shall have jurisdiction for the trial and determination of a). as causes and matters of Civil nature governed only by a customary law specified in the 3rd schedule
b.....
c.....
d.....
e Matters relating to land.
2. In any matter relating to causes and matters specified in the second and 3rd schedules (3rd schedule as refers to disputes of land held under customary

tenure. Section II states that where suits are to be instituted and it provides inter alia.

Every suit shall be instituted in the first instance in the village Local Council Court if it has jurisdiction in the matter within the area of whose jurisdiction.

a.

b.

c. In the case of a dispute over immovable property where the property is attached.

In view of the above it is my considered opinion that the LC. 1 Court had the jurisdiction to hear the case, and not the LC. II court as was done and since the Local Council court Act 13 of 2000 came Later than the land Amended Act, 2004 it over rides the land Amendment Act and the legislators in that instance in section 10 stated 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 of (e) matters relating to land and in section II stated where the matters should be instituted in the first instance in a village Local Council Court, which is LC. 1.

The LC.II Court of Orungo parish was not touched with the jurisdiction as a court of first instance to settle the land dispute between the applicant and the 1st respondent and this is very clear from the Act as the intention of the legislator (See section 10 of the Local Council Courts Act) 2006 and which came later than the earlier Land Acts of 2004 and its amendments and I am supported in my decision by the Supreme Court case of the Attorney General & 10 others SCCA/1/1989 (Supra).

Consequently, court makes the following orders:-

1. An order of Mandamus.
2. It is hereby ordered that the applicant appeals to the LC. III Court by forwarding the original file to the appropriate court for hearing of the appeal.
3. The Respondent is to pay the appellant general damages for the inconveniencies suffered by him as a result of the respondent's action against him.
4. The costs of the application are granted to the applicant.

Margaret C. Oguli Oumo,

JUDGE,

19/4/2011

Note:

Certiorari to call and quash.

- Mandamus to appeal
- Retrial in a court of proper jurisdiction
- Give appeal to High Court so go in hierarchy of the court.