

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
MISC. CIVIL APPLICATION 147 OF 2010
(From Chief Magistrate's Misc Application No. 7 of 2006)

BARIYO JUSTUS

APPLICANT

VERSUS

**ARINAITWE JUDITH }
ARINAITWE GORDON }:**

RESPONDENTS

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

R U L I N G

This Application for a revision order is stated to be brought under Section 83 of The Civil Procedure Act and Order 52 rule 1 of the Civil Procedure Rules.

The Application seeks revision of the orders made by the Chief Magistrate of Kabale in Miscellaneous Application No. 007 of 2006 which was against a decision of LC II Court of Buranga Parish,

Kabale Miscellaneous application had been filed in the Chief Magistrate's Court seeking, among other orders:-

- (a) Stay of execution
- (b) Setting aside as ex-parte Judgment of Buranga LC I Court.

The learned Chief Magistrate held that he could not grant the orders applied for because no Judgment existed at all. He also made provisions for costs of the nullified executions. This application seeks revision of this order. In this Application the fundamental issue is: ***whether there was an ex-parte Judgment made by the LC II Court and if so whether there are Justifications for setting aside the Judgment and /or staying the execution.*** The Advocates involved in this case were not helpful to the Chief Magistrate in course of the proceedings. They adopted very strange procedure of filing affidavits in lieu of the Judgment and belatedly affidavits of service to prove a basis for the ex-parte Judgment. M/S Beitwenda & Co. Advocates filed what was headed as ***'Affidavit to clarify ex-parte Judgment.'*** This was wrong and irregular procedure. A Judgment does not need to be proved by secondary evidence, the Judgment should speak for

itself. A Judgment should contain a concise statement of the case, the points for determination, the decision thereon and the reasons for the decision. The Judgment should be written by the presiding officer, in our case the LC II Court in the language of the court, it should show what was in dispute, the decision taken, the reasons for taking the decision and it must be dated and signed at the time of pronouncing the Judgment. The record before me does not show that a Judgment was written by the LC II Court. There is no proof that hearing of the case was held.

The encyclopedia of Laws of England defines a Judgment thus; “Judgment is the determination of a court declaring the rights to be recognized and the remedies to be awarded between the parties upon facts found by the court or jury, or admitted by the parties or upon their default in the course of the proceedings instituted for the redress of a legal injury.”

I have studied the record on this case as a whole. I have not found any copy of the proceedings and Judgment of Buranga LC II Court. There was no affidavit of service before the LC II Court for it to

decide in default in course of proceedings. The so called affidavit to prove service was filed as late as 5th January, 2006 when the matter was already before the Chief Magistrate. This was defective and irregular approach to the case. Proof of service can only be relevant before the decision to proceed ex-parte and not in the subsequent proceedings.

I appreciate that the proceedings before the LC courts are not expected to be as elaborate as those held by the courts of Judicature but they must observe and comply with the constitutional requirement of fair hearing which demands giving both parties to a dispute equal opportunity to be heard by serving on the parties the court process before hearing or deciding ex- parte. I find that there was never a valid Judgment made by LC II court and the Chief Magistrate had nothing to set aside. There cannot legally be an execution when there were no proceedings or Judgment before the LC II Court. Having found that there was no Judgment, the proceedings in execution based on it were illegal and ought to be set aside. Any injury that arose from execution such as costs can not be provided for because the status quo is as if no action allowed by this court took place. The manner in which this

subject matter was handled by LC II Court, bias can not be ruled out if the same court was entrusted with the same case. Therefore, in interest of justice, if the parties still need to have the matter heard it shall be filed before a Grade One Magistrate Court covering the area in question. Each party shall be responsible for his or her costs in this application.

Dated at Kabale this13th day of March

2012.

J.W. KWESIGA

JUDGE

*Rev. Binangiro Sr Respondent
Mr. Dabangi for applicant absent*