

Judge to hear and entertain an action, matter or proceedings. Also ***Desam v. Warsaw (1967) EA 351*** holding that:

“No court confers jurisdiction upon itself and if it does such proceedings are a nullity.... and it is also a well known principle of the law that judgment of a court which acts without jurisdiction is a nullity.”

Applicant argues that the LC.III Court of Benet Sub-county is not a court of first instance. He referred to paragraph 2 and 3 of the affidavit in support to argue that by virtue of sections 32 (2) (b) of the Local Councils Act 2006, and Section 76 (A) (1) of the Land Amendment Act No.1 of 2004 jurisdiction to handle such a land matter is only vested in the LC.II Court as the court of first instance; not the LC.III Court of Benet sub-county. He called on this court to find the procedure adopted irregular and illegal rendering the decision of LC.III Benet null and void.

Counsel referred to the case of ***Makula International v. Cardinal Nsubuga & Anor. (1982) HCB 11 at page 5*** to argue that since the LC.III decision was illegal and a nullity, all other decisions and actions based on it were equally null and void.

In response, counsel for Respondents opposed the application and raised two questions.

1. Whether the case was subject to the Civil Procedure Act.
2. Whether lapse of time should disfavour applicants to avoid causing hardship and suffering to the Respondent.

Respondent then argued that the LC.III Court of Benet determined the matter following section 34 of the Local Council Act; where LC.III can hear fresh evidence. They argued that no evidence was led to show that the LC.III Court was sitting as a court of first instance in this matter. They argued that the LC.III's actions were within its jurisdiction.

Counsel argued that there are costs incurred from the litigations at Chief Magistrate's Court and High Court and this revision would amount to dilatory conduct since the option to appeal was not exercised by applicants.

They also argued that the fact that time has passed since 2007 when C/S 42/2007 was filed, if revision is granted it would result to hardship and suffering to Respondent; which is contrary to Section 83 of the Civil Procedure Act. They prayed that the application be dismissed with costs.

In rejoinder applicants referred to regulation 70 (1) of the Local Council Courts Regulations S.151 of 2007 where Civil Procedure Rules is made applicable to LC Courts. He referred to Section 10 (1) (a) of the Local Council Court Act 2006 granting jurisdiction of civil nature to the LC Courts. He referred to Section 76A (1) of the Land Amendment Act 2006 which vests jurisdiction of land matters to a parish level court as the court of first instance.

He reiterated the fact that the proceedings were a nullity and ought to be found as such, which renders all actions before Chief Magistrate, etc equally null and void. This being an illegality he argued court to ignore the rest of the arguments on hardships, and costs since illegality diminishes all such questions- per ***Makula International*** (supra).

Given all arguments above I find as follows:

Jurisdiction to Revise

From the provisions of section 83 of the Civil Procedure Act it is provided for thus:

“The High Court may call for the record of any case which has been determined under this Act by any Magistrates Court and if that court appears to have all exercised jurisdiction not vested in it in law.....

The High Court may revise the case and make such order in it as it thinks fit.....”

For avoidance of doubt, this court is enjoined under section 16 (1) Judicature Act, to exercise supervision over Magistrates Courts and under Section 17 (2) (c) Judicature Act to exercise its inherent power to ensure that substantive justice is administered without due regard to technicalities.

The law further provides under section 98 of the Civil Procedure Act, that court’s power is not limited to exercise the inherent powers of the court to make such orders as may be necessary for

the ends of justice to prevent abuse of the process of court. It is the duty of the High Court to supervise subordinate courts.

Reading Article 274(1) and (2) of the Constitution, with the provisions above, especially the supervisory role of the High Court over subordinate courts, since the Chief Magistrate, has jurisdiction to supervise LC Courts, then the LC decisions are subject of supervision by the High Court, and can to that extent be subject to Revision by the High Court under Section 83 of the Civil Procedure Act. This can be also inferred from reading into the provisions of Regulation 70 (1) of the Local Council Courts Regulations SI-51 of 2007 which makes the Civil Procedure Rules applicable to LC Courts.

I find therefore that this court is competent and has the jurisdiction to hear this application.

Whether the LC.III Court of Benet Sub-county exercised jurisdiction not vested in it by law.

In answering this question I will also answer the two questions posed by Respondents regarding jurisdiction and passage of time.

I have already found that the Civil Procedure Rules applies to these provisions by virtue of the laws quoted.

The question however is whether the decision by the said LC.3 Court was a valid decision. Did the court have jurisdiction?

The background has been given. It is not disputed that judgment for which revision is sought was delivered by the LC.III Court of Benet Sub-county.

The judicial power of the LC Court is derived from the LC Courts Act of 2006 which came into force on 8.6.2006.

Section 10 (1) (e) of the Act(LCCA) provides that:

“Subject to the provisions of the Act and any other written law, every council court shall have jurisdiction for the trial and determination (inter alia)... of (e) matters relating to land.”

Section 11(1) provides that:

“Every suit shall be instituted in the first instance in a village local council court, if that court has jurisdiction in the matter.... within the area....”

Also; the Land Amendment Act 2004 gave jurisdiction to handle land matters to the LC.2 Courts as courts of first instance.

The same provision (Section 76A) (1) provides that:

“Notwithstanding the provisions of Sections 5, 7, and 29 of the executive committee judicial powers Act, the parish or ward executive committee shall be courts of first instance in respect of land disputes...”

When the above provisions are applied to the facts before me, there is evidence from the affidavits sworn in support and in rejoinder to the effect that the said LC.III Court sat as a court of first instance see paragraph 2 of **Sorowen James**' affidavit in support and paragraph 7, 8, 9, 10 and 11 of his affidavit in rejoinder.

I have also taken judicial notice of the fact that under Misc. App.003/2009, and **C/S.22/2007 Sorowen James Kapsus v. Cherop Stephen**, the court record contains the original proceedings of the LC.III Court. The proceedings, attached minutes, attendance, all show that the matter has been tried as a first court of instance.

I also noted communications from LC.Is and LC.2s complaining that they were not given an opportunity to hear that matter.

It is therefore not true as stated by Respondent that there is no such evidence. There is therefore ample evidence upon which to conclude that, the LC.3 tried this matter as a court of first instance yet it did not have that jurisdiction.

There is no merit in the proposition that since the applicant had not appealed then he is stopped from bringing this application.

The root of the trial at LC.III was rotten. The court acted without jurisdiction. I agree with the persuasive holding in *Peter Mugoya v. James Gidudu and Mukabaii Namonye (1991) 2 HCB*, that a trial with no jurisdiction is no trial at all and is a nullity.

It was held further in *Makula International Ltd vs. His Eminence Cardinal Nsubuga & Anor. (1982) HCB 11*, that an illegality once brought to the attention of court cannot be allowed to stand. Such an illegality overrides all questions of pleadings including any admissions made.

The import of the above case law to this case is that once an illegality is discovered and is brought to court's attention then whatever actions which were accruing therefrom collapse along with it. No one can be allowed to benefit from the fruits of an illegality. Therefore all costs, and or benefits, Respondents allude to as being in their favour as a result of the said judgment are also null and void.

Having judiciously considered all matters as above, I have made the following findings of facts in conclusion of this matter.

1. The LC.III Court of Benet sub-county which sat and determined CS No. 022/07 Cherop Stephen vrs. James Kapsus, did not have jurisdiction to hear the matter.
2. The judgment and orders of the LC.3 Court of Benet Sub-county of 21.09.2007 is null and void having been reached without jurisdiction.
3. In the result therefore, this court hereby finds that the applicant has proved this application.

This court grants the application prayed. The judgment and orders of the LC.III Benet sub-county court as hereby set aside. In the interest of justice, I order that this matter should proceed on retrial before a competent court in Kapchorwa preferably the Chief Magistrate. I will further order in the interest of justice that each party should bear their own costs of this application.

I so order.

Henry I. Kawesa

JUDGE

02.06.2017