

UGANDA / JUDGMENT

Asaba v Kibirige (Civil Revision 8 of 2024) [2025] UGHC 161 (20 February 2025)

[2025] UGHC 161

COURT

High Court of Uganda

BEFORE

Karemani Jamson K, J

CASE / FILE NUMBER

Civil Revision 8 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KIBOGA

CIVIL REVISION APPLICATION NO.0008 OF 2024

(ARISING FROM NTWETWE SUB-COUNTY COURT C. S NO.003 OF 2023)

ASABA DAUDI:.....

VERSUS

KIBIRIGE CHRISTOPHER:.....

BEFORE: HON MR. JUSTICE KAREMANI JAMSON. K

RULING

Introduction

Asaba Daudi (herein after referred to as the applicant) brought this application by notice of motion under Section 98 of the Civil Procedure Act (CPA), Section 33 of the Judicature Act, Section 40 of the Local Council Courts Act and Order 52 Rules 1, 2, 3 & 5 of the Civil Procedure Rules (CPR) against Kibirige Christopher (hereinafter referred to as the respondent)

He seeks orders that;

- 1. The judgment and orders of Ntwetwe LC. III Court dated the 9th February, 2023 be revised and set aside.
- 2. Costs of the application be provided for.

Background

The applicant sued the respondent for trespass before the LC II Court of Kabuye Parish.

A judgment was entered in favour of the applicant. Later the same matter was lodge in the LCIII court of Ntwetwe, was entertained between the same parties and judgment was entered in favour of the respondent. The respondent then commenced execution proceedings before the Chief Magistrate's court of Kiboga. It is upon these proceedings that the applicant being aggrieved filed this revision application contending that the LCIII Court at Ntwetwe did not have jurisdiction to handle the case.

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Grounds.

The grounds of this application are contained in the application and affidavit in support sworn by the applicant but briefly are;

- 1. That the applicant sued the respondent in the parish court of Kabuye sometime in April, 2022 where the applicant won.
- 2. That the respondent did not appeal against the judgment of the parish court.
- 3. That unknown to the applicant, instead of appealing against the LCII court judgment of Kabuye parish, the respondent filed a fresh suit as civil suit no. 03 of 2023 before the LCIII court of Ntwetwe sub-county.
- 4. That the applicant was served with the document entitled summon and hearing notice in respect to civil suit no. 004 of 2022 and when he went to court, he was told that the suit was not coming up that day.
- 5. That civil suit no. 03 of 2023 was heard and determined without the knowledge and in the absence of the applicant and judgment was given ex parte in favour of the respondent.
- 6. That the applicant has been advised by his lawyers that the LCIII court of Ntwetwe did not have jurisdiction to entertain civil suit no. 03 of 2024 as a court of first instance the same having been handled and determined by the LCII court of Kabuye Parish.
- 7. That the applicant has been advised by his lawyers that the LCIII court of Ntwetwe exercised jurisdiction not vested in it by the law and as such the judgment in civil suit no. 03 of 2024 is illegal and a nullity.
- 8. That it is in the interest of justice that this application is granted.

In opposition to the application, the respondent swore an affidavit in reply on the following grounds;

- 1. That around 2019, the respondent reported the applicant and his father late Kalooli Kajabwami to the LCI Court of Kanabugoma-Kitemezi for trespass but the case was not resolved by the LCI Court upon which the matter was forwarded to the LCII Court.
- 2. That the applicant took over the prosecution of the matter individually upon the death of his father.
- 3. That the LCII court heard the matter and decided the same in an undated judgment that was in favour of the applicant.

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- 4. That being dissatisfied with the decision of the LCII Court, the respondent appealed to Ntwetwe Sub-county LCIII Court and the LCIII Court decided in the respondent's favour.
- 5. That it is not true that the proceedings in the said LCIII court were as a result of a fresh suit but as an appeal since the matter had been decided by the lower court.
- 6. That the respondent has been advised by his lawyers that the procedure adopted by the local council court is not a formal one and that the litigant has no control over the adopted procedure which the applicant seem to suggest was a wrong procedure.
- 7. That at all stages of the proceedings in the lower courts, the applicant was involved and participated as an interested party and there was no time when the trial was ex parte.
- 8. That the applicant has not demonstrated the conditions for the grant of this application therefore it lacks merit and should be dismissed.

Representation.

The applicant was represented by Mr. Male Swaibu Nsereko of M/S Natweta & Co. Advocates while Mr. Kabiswa Hillary of M/S Tenax Advocates represented the respondent.

Both parties filed written submissions for consideration in this ruling.

Preliminary objection.

The learned counsel for the respondent objected to the propriety of the instant application and stated that the same was stale and should be dismissed. That the application was filed in court on \$27/8/2024\$ and the same was endorsed by the honorable Deputy Registrar on \$23/9/2024\$, fixed for hearing on \$28/10/2024\$ at 9:00am. That the application was however served onto counsel for the respondent on \$30/10/2024\$ when he appeared for hearing of the execution proceedings before the Chief Magistrate. That the said application had to be served within 21 days from the date of endorsement by court as per Order 5 Rule 1(2) of the CPR which implies that this application had to be served by \$13/10/2024\$. That \$13/10/2024\$ being a Sunday, the application

had to be served by \$14/10/2024\$. This was not done and instead the service was done on \$30/10/2024\$ when the application was stale.

Counsel cited the case of Gladys Senkubuge and Anor V Kibirango Joyce Misc. appln. No. 1704 of 2019 in which it was stated that all provisions under Order 5 Rule 1 of the CPR are of strict application since the penalty accrues upon default.

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The applicant did not file submissions in rejoinder and hence did not reply to the preliminary point of law raised about service out of time.

Analysis by court.

Upon perusal of the court record, this matter I found that this matter first came up for hearing on \$28/10/2024\$ and counsel for the applicant informed court that the application had not been served on the respondent as efforts to do so were in vain. Counsel prayed for fresh hearing notices to serve onto the respondents and court granted the prayer giving the matter a fresh hearing date of \$20/11/2024\$.

On \$13/11/2024\$, the respondent filed an affidavit in reply responding to the application. This indicates that the respondent was served with both the hearing notices and application.

I therefore find that despite the respondent not being served with the application in time, the applicant was granted permission or leave by the court to do so out of time having failed to trace the respondent within the prescribed time earlier. The issuance of the hearing notice for another date by court signified that court had allowed the service despite the time in the application having passed.

The preliminary objection is thus overruled.

I will now proceed to determine the application on its merits.

Issues.

- 1. Whether the applicant has raised sufficient grounds to warrant revision and setting aside of the judgment and orders of Ntwetwe LCIII court dated 9th February, 2023
- 2. What remedies are available to the parties?

Resolution of issues.

1. Whether the applicant has raised sufficient grounds to warrant revision of the judgment and orders of Ntwetwe LCIII court dated 9th February, 2023

Black's Law Dictionary 9th edition defines revision as a re-examination or careful review of correction or improvement or an altered version of work.

The powers of the High Court to exercise revision of a court order is enshrined in **Section 83 of The Civil Procedure Act** which states as follows: \$M\$ am

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"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,

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

See also; Elelu Samuel V Eriono Charles HC Revision Application NO. 002 OF 2022

The learned counsel for the applicant submitted that the jurisdiction to sit as a court of first instance in respect of land matters is vested in the Parish LCII court and not the LCIII court and as such, Ntwetwe sub-county LCIII court was not vested with jurisdiction to hear and determine the dispute in civil suit no. 003 of 2023 as a court of first instance. That the LCIII court can only sit as an appellate court.

Learned counsel for the respondent on the other hand submitted that the dispute at hand was never tried by the Ntwetwe sub-county LCIII court as a court of first instance because the parties do not dispute the fact that the dispute was first tried by the Kabuye parish LCII court which decided the same in the favour of the applicant.

Analysis by court

Section 31 of the Local Council Courts Act cap 18 provides for a right of appeal. It provides as follows:

\$(1)\$ A party dissatisfied with the judgment or order of a local council court may, subject to the provisions of this section or any written law, appeal against the judgment or order; but no appeal shall lie from a judgment or order passed or made as a result of the consent of the parties."

Subsection \$(2)\$ provides as follows;

An appeal shall lie—

- (a) from the judgment and orders of a village local council court to a parish local council court;

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- (b) from the judgment and orders of a parish local council court, to a town, division or sub-county council court;

- (c) from the judgment and orders of a town, division or sub-county local council court to a court presided over by a Chief Magistrate;
- (d) from decrees and orders made on appeal by a Chief Magistrate, with the leave of the Chief Magistrate or of the High Court, to the High Court."

From the above provisions, a sub-county court can only hear appeals from the parish local council court. It does not possess jurisdiction of a court of first instance.

In this case, the applicant contends that the LCIII court at Ntwetwe did not entertain an appeal but instead heard a fresh suit as an original court.

I have perused the judgment of the Local Council III Court of Ntwetwe and proceeding in Case no. 03 of 2023. It shows that both parties appeared before the court and presented their respective evidence upon which the court decided in favour of the respondent. There is no indication in the said judgment or proceedings that the court was sitting as an appellate court.

Whereas I am in agreement with counsel for the respondent that it is common for local council courts not to be particular in numbering or naming parties in their pleadings or proceedings, it is my considered position that the proceedings and judgment should portray a picture that the matter is an appeal and not an original suit. There should be a reference to the proceedings in the Parish court and a reflection on whether the lower court decision is sustained or set aside. Ignorance of the procedure by the members of the court does not change the position of the law.

The framers of the Local Council Courts Act intended that the Sub-county court sits as an appellate court and not an original court. They envisaged that the members would be versed with their powers as an appellate court and that they would exercise those powers appropriately. The emphasis should therefore be to enlighten the members of those courts of their powers rather than bending the law to accommodate irregular proceedings that they are making.

In the Luvule Ronald versus Kasirivu Richard High Court Revision Cause No.24 of 2023 at **Land Division (unreported)** it was held that the provisions of the law clearly show that neither the LCII nor the LCIII have original jurisdiction. That the Local Council Courts Act and its

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Regulations require that all suits be filed in the village Council Courts as courts of first instance. I concur with the above finding but only add that above position doesn't not apply where the subject matter is land. The court of first instance is Local Council II or parish court if the subject matter is land.

I do find that failure to observe the procedure of the appeal provided by the Local Council Courts Act and the Regulations may occasion a bigger cost on the parties who have to keep presenting witnesses and evidence at every court level. This is not what the framers of the Act intended. The framers of the law instead intended to make these courts as cost effective as possible. Calling witnesses afresh, adducing fresh evidence or recalling witnesses that have already testified in the lower court should be an exception and only done after leave has been sought and granted by the

court sitting in the appeal.

It is my considered view that even Article 126 (2) (e) of the Constitution and Section 22 of **the Local Council Court's Act** on technicalities cannot save this situation. I find that this is not a mere technicality but a substantive matter of procedure.

Consequently, I find that the Local Council III Court at Ntwetwe entertained this matter without jurisdiction when it entertained the same as a court of first instance.

2. What remedies are available to the parties.

Having found that the LCIII court at Ntwetwe sub-county entertained this matter without appropriate jurisdiction, it follows therefore that this application has merit and is hereby allowed with the following orders:

- 1. The judgment and orders of the Local Council Court III of Ntwetwe are hereby revised and set aside.
- 2. The judgment of Local Council Court two of Kabuye Parish is restored.
- 3. Given the fact that the procedure was flouted by the Local Council Court, each party shall bear its own costs of this application.

\$711\$ and \$7\$ KAREMANI JAMSON. K JUDGE \$20/2/2025\$

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