

UGANDA / JUDGMENT

Nalongo Burashe v Kekitiibwa (Misc. Application No. 8 of 2010) [2010] UGHC 236 (15 June 2010) [2010] UGHC 236

COURT

High Court of Uganda

BEFORE

Kiggundu, J

CASE / FILE NUMBER

Misc. Application No. 8 of 2010

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MASAKA.

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**MISC. APPLICATION NO. 8 OF 2010. (ARISING FROM MA 162 OF 2009 MASAKA)
(ARISING FROM KALAGALA LCII C, S. 12 OF 2009)**

NALONGO BURASHE APPLICANT.

VERSUS

KEKITIIBWA MANGADALENA RESPONDENT. BEFORE : HER LORDSHIP HON. JUSTICE
KIGGUNDU JANE F. B.

RULING

This is a ruling. It is in respect of an application by Messrs- Baryajunwa Gibbs Esq. (Advocate) brought before this Hon. Court by way of Notice of Motion under S. 98 and S. 83 of the Civil Procedure Act, order 52 r.1 of the Civil Procedure Rules and S. 30 and S. 32 of the Local Council Courts Act, Act 13 of 2006. An affidavit the applicant swore on 24th February 2010 accompanied the application above. :

In essence, the contents of the application and the affidavit in support thereof sought this court's order to nullify the L. C. 11 court of Kalagala Parish's proceedings and orders thereof dated 25th April 2009 in respect of C.s. No. 12 of 2009. That this was just and equitable since the Kalagala LC 11 court lacked original jurisdiction to hear the matter. To understand the above application fully, one needs to know the background that gave rise to it. Briefly, the background was as follows: 6
HIGH COURT OF UC-ANDX

A one Mangadelene Kekitiibwa alleged that on 2.12.2008, a one Nsamba

- Richaid sold his kibanja to her. An agreement was drawn up in which it was agreed as follows:
- The purchase price of the kibanja was shs. 2.8M.
- Mangadelene Kekitiibwa was to pay shs. 500,000/- as part payment.
- The balance was to be paid by 28.1.2009.

Mangadelene Kekitiibwa paid shs. 500,000/- to Nsamba Richard and the agreement was duly executed.

Subsequently, on or about 13.1.2009, Nsamba Richard purportedly sold the same kibanja to a one Nalongo Burashe (the applicant in the case before court).

Being aggrieved, Mangadelene Kekitiibwa instituted C. S. No. 12 of 2009 in Kalagala Parish LC 11 court, Malongo Masaka. This was after a series of negotiations had failed to solve the problem. The LC ¹¹ court sat heard evidence and made orders.

It is these orders that the applicant seeks this court to nullify. Mangadelene Kikitiibwa applied to the Chief Magistrate's court for execution of the decree under O. XIX r. 19 a Notice to show cause dated 10.11.2009 why execution should not issue was duly served on Richard Nsamba and Nalongo Burashe.

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On 9.12.2009, the Chief Magistrate's court dismissed the application on the ground that the LC11 court Malongo had no jurisdiction to entertain a matter of a Civil nature as the court of first instance.

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When the matter came up for hearing on 20.5.1010 Learned counsel Mr. Baryajunwa Gibbs represented the applicant while Learned counsel Mr. Mulindwa Fredrick represented the respondent.

As far as this court is concerned, the main issue to be decided upon is the issue of jurisdiction of the LC 11 court.

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Learned counsel Baryajunwa argued that an LC 11 court has no original jurisdiction in Civil matters. He quoted S. 30 and S. 32 (2) of the local council Courts Act, Act 13/2006. He submitted that S. 32 (2) gives Lc courts powers to handle matters arising from cases and causes from LC 1 courts. That this section only confers jurisdiction to LC 11 courts as $\frac{1}{2}$ appellate courts.

Learned counsel Mr. Mulindwa Fredrick did not address this issue.

Court has taken note and has this to say. The matter in this case arose on 21.12.2008. The applicable law therefore is the Land Act, (Cap 227), and the Land (Amendment) Act, Act 1 of the 2004 and the Local Council courts Act, Act 13 of 2006.

S. 50(1) of the local council Act, Act 13 of 2006 repealed the Executive Committees (Judicial Power) Act (Cap 8).

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HIGH COURT OF UGANDA I Certify that this is a true copy of the original

- s. 30 of the Land (Amendment) Act, 2004 introduced S. 76 A of the land Act which states that The Parish or Ward Executive Committee courts shall be the courts of first instance in respect of Land disputes". It therefore follows that these two pieces of legislation removed the legal jurisdiction from a village executive committee court to try and determine land disputes. My opinion is that the court of first instance in respect of Land disputes is the Parish or ward executive committee court and NOT the village executive Committee court.

In dismissing the application for execution, this court is not sure which law the Chief Magistrate relied on. May be relied on the argument of counsel. :

The applicant brought this application to this court for orders nullifying the orders of the LC 11 court on the ground that the LC ¹¹ court had no original jurisdiction to try a Civil matter. This court finds that in cases of Land, the LC 11 court has original jurisdiction to hear and determine Land matters.

In conclusion, this court has no choice but to dismiss the application herein with costs and it is hereby so ordered.

The registrar is hereby requested to return to the Masaka Chief Magistrate's Court the record so that execution proceedings are conducted.

Sgd. Kiggundu Jane F. B.

JUDGE. R^W⁵® I HIGH COURT OF UGANDA J Certify that this is ^a true copy original

Date: 15.6.2010 AT 2.50 P. M.

Mr. Baryajunwa Gibbs - absent. Mr. Mulindwa Fredrick - absent. Applicant- absent. Respondent-present.

Ms. Nalubega H. - Court clerk and interpreter.

Court: Ruling read in open court.

Sgd. Kiggundu Jane F. B. JUDGE 15.6.2010.

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