



5 that belonged to her late husband so that she and her children can occupy the same. The court in its Judgment delivered on the 12/03/2022 found in favour of the respondent and ordered the applicant to return the properties comprised in Mumatongo, Nyimarengwa, Kugasenyi, Karurugo and Mugasarara to the respondent and her children.

10 The respondent there after filed at Kisoro Chief Magistrates Court CMA No.13/2022 seeking orders for execution of the Judgment of the LCII court at Sooko parish and the court on 05/09/2022 in its ruling granted the orders sought hence the instant application.

### **Representation.**

15 At the hearing of this application Rev. Bikangiso Ezrah appeared for the applicant while Mr. Beitwenda Dan represented the respondent .Both counsel proceeded by way of written submissions.

### **Brief of counsels submissions.**

Applicants counsel.

20 It's the submissions of the applicant's counsel that Section 83 of the civil procedure Act provides that the High Court may call for any record of any case which has been determined under this Act by any Magistrates Court if that court appears to have exercised a jurisdiction not vested in-law, failed to exercise a jurisdiction so vested or acted in the exercise of its jurisdiction illegally or with  
25 material irregularity or injustice.

Counsel for the applicant on the first ground that the LCII Court of Sooko parish exercised a jurisdiction not vested in it at law contends that respondent sought to recover pieces of land left to her by her late husband and that this action was a succession matter that is governed by the succession Act and the local council  
30 court of Sooko parish did not have jurisdiction to hear and determine the matter.

To buttress his argument counsel relies on the provisions of the **Succession Act** under **Section 2(d)** that defines a court as being the High court or Magistrates court other than magistrate court presided over by a magistrate Grade II.

5 Counsel further relies on the provisions of **Section 10** of the **Local Council Courts Act** that gives the Local Council Court jurisdiction to try and determine matters of civil nature specified in the 2<sup>nd</sup> schedule, matters of the civil nature governed only by customary law specified in the 3<sup>rd</sup> schedule, matters specified under the children's Act and matters relating to land and that LCII Courts have no  
10 jurisdiction to handle matters of succession. To this effect counsel relied on the decision in **Friends in Need SACCO Ltd Versus Lulume Nambi Norah civil appeal No.89/2019** in which court held that a judgment of a court without jurisdiction is a nullity.

On the 2<sup>nd</sup> ground that the Chief Magistrate acted in exercise of its jurisdiction  
15 illegally or with material irregularity or injustice. Counsel for the applicant submits that **Section 27** of the **Local Council Act** gives the court powers to execute their own Judgments by attachment and sale of property belonging to the Judgment debtor and that chief magistrate did not give a chance to the LCII Court at Sooko parish to execute its own Judgment.

20 Counsel further contends that the Chief Magistrate acted with material irregularity when he executed a Judgment that had been illegally determined by the LCII Court of Sooko on matters of succession yet local council courts have no jurisdiction to determine such matters.

On the 3<sup>rd</sup> ground counsel submits that the subject matter consists of 4 pieces of  
25 land and the same being a scarce resource in the Kigezi region. It's in the interest of the justice that the instant application is allowed and the same is litigated upon before a competent court.

### **Respondent counsel.**

On the first ground it is the submission of the respondent's counsel that the  
30 subject matter before the LCII Court of Sooko parish was customary land and subject to the Local Council Courts Act, 2006 and not the succession Act as submitted by the counsel for the applicant. To buttress his argument counsel relies on the provisions of the said Act specifically **Section 10 (a-b)** and the **2<sup>nd</sup> schedule** to the same.

5 It is the contention of the Respondents counsel that the suit property was  
matrimonial property having been given to the respondent and her late husband  
and that the respondent left the same under the care of the applicant upon the  
death of her husband and she only sought to reposes the same with her children  
and that the refusal by the applicant to hand over the same led to a case of tress  
10 pass and thus ownership had to be determined by the LCII Court since it was  
customary land.

Counsel for the Respondent further argues that the respondent had all rights to  
claim the suit property under the right of survivorship where jointly owned  
property devolves to the surviving spouse and that as such the suit property was  
15 not an Estate of the Respondent's husband but rather for the respondent as a  
surviving spouse and therefore that the LCII Court had jurisdiction to determine  
the case.

On the 2<sup>nd</sup> issue counsel for the respondent submits that the Chief Magistrate  
exercised jurisdiction vested in him **under Section 40 of the Local Council**  
20 **Courts Act** as he exercises supervisory powers over the Local Council Courts.  
Further that under regulations made there under specifically **Reg.58 (3) the**  
**Local Council Courts** cannot make an order for attachment of immovable  
property of a Judgment debtor or removal of a Judgment debtor without the  
written consent of the chief Magistrate.

25 It's therefore counsel's contention that there was no irregularity in the chief  
magistrate issuing the orders that he did under CMA NO.13/2022.

On the 3<sup>rd</sup> ground counsel for the respondent submits that under **Section 10** of  
the **Local Council Court Act** the LCII Courts are the courts of first instance in  
respect of land disputes and that the LCII Court at Sooko was competent to try  
30 and determine the dispute between the parties.

The Applicants counsel rejoined submitting that the dispute between the parties  
was not one over marital ownership but rather succession.

5 Counsel also sought to rely on the provisions of **Section 5 of the limitation Act** submitting that the respondent's claim was time barred having been brought 20 years since the death of her husband.

**My decision.**

**Section 83** of the **Civil Procedure Act** provides that;

10 *“The High Court may call for the record of any case which has been determined by any Magistrates Court if such court appears to have:*

- a) *Exercised a jurisdiction not vested in it in law, Or;*
- b) *Failed to exercise a jurisdiction so vested or;*
- c) *Acted in the exercise of its jurisdiction illegally with material irregularity*  
15 *or injustice;*
- d) *The high court may revise the case and may make such order there in as it thinks fit but no such order...”*

According to **Blacks Law Dictionary 8<sup>th</sup> Edition**, Revision means a re-examination or careful review for correction or improvement.

20 **Section 83** of the **Civil Procedure Act** is concerned with jurisdiction and jurisdiction alone involving a refusal to exercise jurisdiction where one exists and acting with illegality or material irregularity or injustice.

I have perused the record of proceedings before the LCII Court at Sooko parish and the Respondent in her opening statement before the court states that she is  
25 suing for pieces of land that belonged to her late Husband so that she and her children can occupy them.

The Respondent also under cross examination by the court revealed that the pieces of land being litigated upon were received as marriage gifts.

It is imperative to note that while there was no documentary evidence adduced  
30 by the Respondent in respect of her claim, the Applicant did not appear to challenge her averments that the properties indeed belonged to her late husband.

5 The evidence on the record is not quite clear as to whether the properties were received as a marriage gift to the couple jointly or whether it was solely a gift to the respondent's husband upon marriage. The respondent however going by her statement to the court it would appear perceived the gifts to belong to her late husband hence her phrase that *"And what has brought me is seeking for land*  
10 *pieces (SIC) that belonged to my late husband so that my children can be able to occupy it"*

The submissions of the respondent's counsel that the suit property was marital property or that the Respondent lay claim to it under the principle of survivorship is opposed by the applicant who toes the line that the suit property forms part  
15 and parcel of the Estate of the late Gatusi.

In consideration of the evidence on the record I find the arguments of the Applicant to be more credible.

The Respondent was suing for property that belonged to her late husband and this property formed part of his estate.

20 **Section 10** of the **Local Council Courts Act** confers jurisdiction upon the local council courts to determine matters including those relating to land.

**Schedule 2** to the Act lists trespass as one amongst the actionable matters while the **3<sup>rd</sup> schedule** describes the civil disputes governed by customary law triable by the courts to include disputes in respect of land held under customary tenure.

25 I am inclined to agree with the Applicants Counsel that the disputes between the parties relates to Estate property in which the respondent is obligated to prove her claim and that of her children that she's litigating for.

The guiding law in this respect is the succession Act as Amended and the same is not applicable before the local council courts.

30 As it stands therefore the decision of the LCII Court at Sooko is a nullity and cannot be allowed to stand.

5 An illegality once brought to the attention of court overrides all questions of pleadings including any admissions made thereof. **See Makula International Ltd versus His Eminence Emmanuel Cardinal Nsubuga &Anor CA No.4/1982.**

It therefore follows that the chief magistrate in consenting to the execution of CMA No.13/2022 exercised a jurisdiction not vested in it in law.

10 In the final result, the instant Application is allowed and the orders of the chief Magistrate in CMA No.13/2022 and that of the LCII Court at Sooko parish in case No.02/2022 are hereby set aside.

In the interest of promoting harmony between the parties in this Application who are brother and sister in law, I will order that each party bears their own costs  
15 before this court and the courts below.

**Before me;**

20 .....  
**SAMUEL EMOKOR**  
**JUDGE**  
**30/05/2023**

**30/05/2023**

25 Mr. Beitwenda Dan holding brief for Counsel Rebecca for the Respondent

Parties absent

Clerk: Vianney

**Court:** Ruling delivered in chambers.

**Before me;**

30 .....  
**SAMUEL EMOKOR**  
**JUDGE**  
**30/05/2023**