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THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KABALE  
CIVIL APPEAL NO. 014 OF 2023

(ARISING FROM CIVIL MISC. APPLICATION NO. 9 OF 2022)

(ARISING FROM CIVIL MISC.APPLICATION NO.129 OF 2020)

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(ARISING FROM THE JUDGMENT OF LC111 COURT OF KAMWEZI SUB-COUNTY, RUKIGA DISTRICT)

TWESIGYIRE ROBERT ::: APPELLANT

VERSUS

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TUKWASIBWE JULIUS ::: RESPONDENT

BEFORE: HON. JUSTICE SSEMOGERERE, KAROLI LWANGA

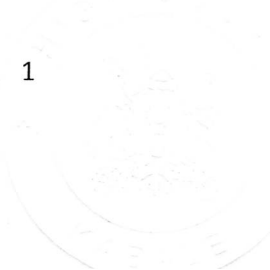
JUDGMENT

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Brief Facts:

This matter arises from proceedings commenced in the LC I Court in Nyakeine Village whose judgment was delivered in 2020. This is an appeal  
25 against the ruling of the learned Chief Magistrate Kabale, His Worship Borore K Julius delivered on January 12<sup>th</sup>, 2022 in Civil Application No. 129 of 2020 arising from the judgment of the LC III Court, Kamwezi Sub-County, Rukiga District. The application sought to nullify the LC II and LC III judgments of Kyabuhangwa Parish and Kamwezi sub-county LC courts, on  
30 the grounds that they did not have jurisdiction to hear a matter that first arose in the LC1 Court of Nyakeina. In the LC1 court, the appellant was declared the owner of a piece of land containing a banana plantation in the village. The respondent petitioned the LC II Court of Kyabuhangwa Parish and was declared the winner [emphasis mine]. The appellant unsuccessfully

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by namera Alice  
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1 taken by  
do. Anguzu Jonathan  
an behalf of  
Between do & Co. Ad.  
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5 petitioned the LC III Court of Kamwezi Sub-County LC III Court. The  
learned Chief Magistrate upheld the findings of the village, parish and sub-  
county courts, holding that after reviewing the entire record of the lower  
courts, the parish court (“LC II court”) had heard evidence of the parties  
afresh, and witnesses were heard. He held that the judgments of the two  
10 courts were based on evidence; and the LC II court had entertained the  
dispute “as if it were a court of first instance” because it subjected the  
dispute to fresh evidence and evaluation and that the proceedings were a  
retrial. He declined to overrule the judgments of the LC II Court of  
Kyabuhangwa and the LC III Court of Kamwezi sub-county even though  
15 there may have been irregularities in the form of the same.

Dissatisfied with the ruling of the learned Chief Magistrate, the appellant  
appealed to this court.

#### 20 Memorandum of Appeal:

Appellant framed 4 grounds of appeal. These are:

1. The learned Chief Magistrate erred in law and fact when he  
disregarded the illegality of the LCI Court of Nyakeine, a court  
25 without jurisdiction, thereby occasioning a miscarriage of justice.
2. The learned Chief Magistrate erred in law and fact when he held that  
entertaining the dispute by the LC I and LC II court was an irregularity  
of form and not substance.
3. The learned Chief Magistrate erred in law and fact when he held that  
30 that the LC II court entertained the dispute as a court of first instance  
when it subjected the dispute to fresh evidence and evaluation and  
retried the dispute.
4. The learned Chief Magistrate erred in law and fact when he relied on  
Article 126(2)(e) of the Constitution to circumvent or disregard the  
35 provisions of the Local Council Courts Act, 2006.

5 **Representation:**

This appeal came up for oral argument on June 26, 2025. Appellant was represented by M/S Beitwenda & Co. Advocates and Respondent was represented by M/S Alice Namara & Co. Advocates. Court directed that the appeal be argued by way of written submissions, which directions, the parties have complied with.

**Discussion and Analysis:**

This is an appeal on purely points of law. Appellant chose to argue all grounds together.

15 Appellant addressed court on the apparent conflict of two Acts of Parliament with pertinent provisions. These are:

1. **The Local Councils Courts Act, Cap 18.**

The first provision is **Section 9(1) (e)** of the **Local Councils Court Act, Cap 18**, which provides as follows:

20 “Subject to the provisions of this Act and of any other written law, every local council court shall have jurisdiction for the trial and determination of-

(e) matters relating to land.

The second provision is **Section 10**, of the same act which states:

25 “(1) 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 of whose jurisdiction-

(a) Where the defendant actually resides at the time of commencement of the suit;

(b) Where the cause of action in whole or in part arises; or

30 (c) In the case of a dispute over immovable property, where the property is situated.

(2) Subject to this Act, every suit shall be received by the chairperson and in the absence of the chairperson, by the vice chairperson.

5 2. Section 30 of the Land (Amendment) Act, 2004, which introduced  
Section 76A of the Land Act, which states as follows:

“(1) Notwithstanding the provisions of Sections 5,7 and 29 of the  
Executive Committees (Judicial Powers) Act, the Parish or Ward Executive  
Committee Courts shall be the courts of first instance in respect of land  
10 disputes.”

Appellant in his brief argues that the original trial before the village court  
was an illegality, and further that subsequent appeals could not be heard,  
from a decision of a (village) court that didn't have jurisdiction. Appellant  
disagreed with the decision of the Chief Magistrate declining to set aside the  
15 decisions on appeal by the Kamwezi sub-county Court, and attacked the  
grounds for the decision, characterizing the defects' as “of form rather than  
substance”.

Appellant cited in support of his proposition, the decision of the Court of  
Appeal in *Nalongo Burashe v Kekitiibwa Civil Appeal No. 89 of 2011*, which  
20 summarized the effect of the Land Amendment Act, 2004, on the subject at  
hand to the effect that only the LC II court has original jurisdiction to hear  
and determine disputes over land.

Lastly, the Appellant prayed court to find that appellate powers of court are  
a creation of statute, and no appeal could lie from a court that exercised  
25 appellate rather than original jurisdiction. Appellant prayed that all  
proceedings be quashed, because of the erroneous exercise of judicial power  
by the LC 1 court of Nyakeina Cell.

Respondent on a preliminary objection challenged the competence of this  
appeal, stating that the appeal was filed in this court, prior to the appellant  
30 being granted leave to appeal against the ruling of the learned Chief  
Magistrate. On the record, the relevant dates are as follows, **Miscellaneous  
Application No. 9 of 2022**, applying for leave to appeal against the  
decision of the learned Chief Magistrate, denying the appellant's application  
delivered on December 20<sup>th</sup>, 2021, was decided by the learned Chief  
35 Magistrate on June 27<sup>th</sup>, 2023. This appeal was filed in this court on May  
15, 2023, more than one month before leave to appeal was obtained.

5 Respondent cited Order 44 Rules 2 and 3 of the Civil Procedure Rules, S.I.71-1 (the “Civil Procedure Rules”). Order 44 Rule 2, of the Rules provides as follows:

10 “An appeal under these Rules shall not lie from any other order except with leave of the court making the order, or of the court, to which an appeal would lie if given.”

Order 44 Rule 3, of the Rules provides as follows:

“Applications for leave to appeal shall in the first instance be made to the court making the order sought to be appealed therefrom”.

15 Respondent argued the appeal was incompetent as it was filed without leave.

Respondent cited the Supreme Court decision of **Baku Raphael Obudra & another v Attorney General, Supreme Court Constitutional Appeal No. 1 of 2005**, quoting Odoki C.J. as he then was,

20 “It is trite law, that there is no such thing as inherent appellate jurisdiction. Appellate jurisdiction must be specifically created by law. It cannot be implied.”

Respondent did not make any other submissions on the substance of the appeal.

25 Appellant in rejoinder stated the certified record of proceedings, shows the ruling was delivered on April 27<sup>th</sup>, 2023, while the judgment show the ruling was delivered and signed on June 27<sup>th</sup>, 2023.

30 Appellant’s position is not correct. The certified record of proceedings cited by Appellant refer to **Civil Miscellaneous Application No. 129 of 2020**, which was delivered by the learned Chief Magistrate, while he was a Grade I Magistrate on April 27<sup>th</sup>, 2023. The ruling in **Miscellaneous Application No. 9 of 2022**, was delivered by the learned Chief Magistrate, Derick Byamugisha, on June 27<sup>th</sup>, 2023, and the copy on file bears his correct signature. **Miscellaneous Application No. 9 of 2022** was the relevant application for leave.

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The appeal therefore, is incompetent as a matter of law.

**Comment:**

Besides, the competence of the appeal, which disposes of the entire appeal,  
10 the matter raises an important point of law. First, what is the correct  
position of the law today on instituting suits on matters relating to land  
under the current law. The correct venue, today, is the village local council  
under Section 9(1)(e) of the **Local Council Courts Act, Cap 18**. The old  
15 position under Section 76A of the Land Act, which vested this power in the  
parish/ward local council enacted by **Section 30 of the Land (Amendment)  
Act, 2004**, is no longer the applicable law. The revised **Land Act, Cap 236**,  
of the revised Laws of Uganda no longer carries this provision. The Land  
Amendment Act has been fully incorporated in the revised Land Act, see  
20 page cxiv of the Chronological Table of Enactments, in Volume 1 of the  
**Land Act**.

Court appreciates the assistance of Director First Parliamentary Counsel,  
who painstakingly assisted in establishing the fate of Section 76A, as it was in  
direct conflict with the current law. Second the **Executive Committee  
(Judicial Powers) Act**, formerly Cap 8, the application provision for Section  
25 76A is also repealed law. The law in effect today, is the **Local Council Courts  
Act, Cap 18**.

The Land Act, still has a jurisdictional overlap. **Section 77(1)(c)** of the Land  
Act vests in the district land tribunals the jurisdiction to determine as the  
court of first instance all land matters where the subject matter does not  
30 exceed two thousand five hundred currency points.

**Findings and Conclusion:**

The preliminary objection is upheld. The appeal is improperly before this  
court; as it was filed before leave to appeal was obtained.

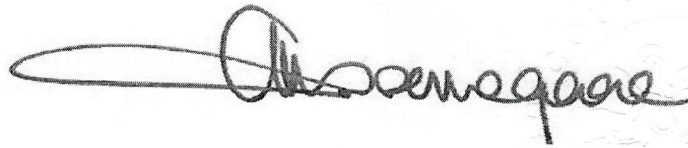
35 The entire appeal fails.

5 Costs to the respondent.

I SO ORDER,

DATED AT KABALE, this 20<sup>th</sup> day of August 2025.

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A handwritten signature in black ink, appearing to read 'Ssemogerere', with a long horizontal flourish extending to the left.

SSEMOGERERE, KAROLI LWANGA

JUDGE

