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The Role of Local Council Courts in the Administration of Justice in Kahoora Division of Hoima District, Uganda

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ABSTRACT

This study examines the role of local council courts in the administration of justice in Kahoora Division of Hoima District, Uganda. Local council courts exist as a subordinate court with jurisdiction within the precincts of their localities, handling children matters, family, customary land disputes, and other light civil cases. However, the LCC has not become the panacea to the problem of the inaccessibility of justice for several reasons. First, there is the fusion of executive and judicial powers in the same persons, posing inherent dangers to the proper administration of justice. Second, these courts administer the basic principles of an alien law, limiting access to substantive justice. Third, there is general ignorance of the law among those who administer it due to lack of minimal training, leading to confusion in court procedures and judgments. Fourth, voluntarism as a basis for the operation of these courts tends to undermine their efficiency and effectiveness as deliverers of justice. In the light of the analysis above and the challenges, the study calls for the jurisdiction of LCC, especially regarding customary land, to be revised. More so, the substantive matters handled by both rural and urban LCC should differ based on prevalent cases and socioeconomic bases in both areas.

Keywords: Administration of justice, Judicial powers, Local council courts, Subordinate courts, Superior courts.

INTRODUCTION

A court is a permanently organized body with independent judicial powers defined by law, meeting at a time and place fixed by law for the judicial public [1]. The court administers justice by settling disputes through a legal process. People come to court to resolve their disagreements. The courts determine the facts of the case and the appropriate course of action [2]. They decide whether a person committed a crime and determine the appropriate punishment for it. They also provide a peaceful way to resolve private disputes that people can't resolve themselves. A court that receives an appeal is known as an appellate court. Today, courts are established at every village, parish, town, division, and sub-county level, and these are the jurisdictions within which each court at each level may operate. Where one is dissatisfied with a decision at the Village Court, they may appeal to the Parish Court, then to the Sub-County Court. If not satisfied still, he or she is then free to appeal to the Chief Magistrates' Court and then the High Court [3]. While the LCC's role was to administer justice by extending the Resistance Council system to the whole country, with the aim of providing a system of community-controlled policing and justice, the intention was that through popular justice, the local courts and local policing would concern themselves with local civil and criminal matters. This was in a bid to reduce the congestion in the Magistrates' Courts, which were corrupt and not always aware of local customs. The high cost of litigation in the Magistrates' Courts deterred many people from seeking justice [4]. That notwithstanding, the administration of justice in the current LCCs has been marred by procedural irregularity, misconduct or misbehavior, gender insensitivity, abuse of office, and corruption. Explicitly, the law requires the proper composition of the court with qualified members who are knowledgeable and skilled, and a system of proper records management to provide a peaceful way to decide disputes, which has not been the case [5]. The system has also been affected by political antagonism, poverty, HIV prevalence, rampant immigration, lack of funding, lack of the will of the people, and ignorance of their rights and the law. There has also been inevitable conflict in the distinction between the chairperson of the court and one of the administrative unit, overlap in jurisdiction, language, and ethnicity, among others [6]. It is in this light that this study examines the role of local council courts in the administration of justice in Kahoora Division of Hoima District, Uganda.

Legal and Institution Frameworks in Ugandan Justice Administration The Constitution

The Constitution [7] under National Objectives and Directive Principles of State Policy, objective I, provides that all organs and agencies of the State, all citizens, organizations, and other bodies and persons shall be guided by the objectives and principles herein, in applying or interpreting the Constitution or any other law, and in taking and implementing any policy decisions for the establishment and promotion of a just, free, and democratic society [8]. Objective II states that the State shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance. Objective III affirms that all organs of State and people of Uganda shall work together to promote national unity, peace, and stability, culture, customs, traditions, and beliefs. Furthermore, there shall be established and nurtured institutions and procedures for the resolution of conflicts fairly and peacefully, with the LCC considered as part of this. Objective V guarantees that the State shall protect, respect, and promote human rights by providing them with adequate resources to function effectively, while Objective VI provides for gender balance and fair representation of marginalized groups [8]. Article 1 provides that all power belongs to the people who shall exercise their sovereignty in accordance with the Constitution, while Article 2 provides for the Supremacy of the Constitution, with binding force on all authorities and persons throughout Uganda. The Constitution expressly provides that judicial power is derived from the people and shall be exercised by the courts established in the name of the people and in conformity with law and with the values, norms, and aspirations of the people. This is reaffirmed by Article 127, which stipulates that the people should participate in the administration of justice, a duty cast upon the LCC. Recognition of the LCC can be observed in Article 129, where judicial power in Uganda shall be exercised by the courts of judicature consisting of such subordinate courts. Supplementary to the above, Article 176 reiterates that the system of local government in Uganda shall be based on the district as a unit under which there shall be such lower local governments and administrative units as Parliament may provide by law, and thus the LC fall under that category [9].

The Local Government Act

The objectives of the Local Government Act are to give effect to the decentralization of functions, powers, responsibilities, and services at all levels of local governments, to ensure democratic participation in, and control of, decision-making by the people concerned, notwithstanding the establishment of democratic, political, and gender-sensitive administrative setups in local governments. Auxiliary to that, the system of local government is based on the district as a unit under which there shall be lower local governments and administrative units, of which the LCs are part and parcel [10]. A local government council's functions within its area of jurisdiction, inter alia, are to exercise all political and executive powers and functions, provide services as it deems fit with the exception of the functions, powers, and services listed under Part II of the Second Schedule to the LGA, protect the Constitution and other laws of Uganda, and promote democratic governance; and ensure the implementation and compliance with Government policy. Section 39 mandates the lower councils to legislate in terms of bylaws, the breach of which can be sanctioned by the LCC. Suffice to note is that a local council shall have no power to make any law relating to the establishment or administration of courts or to the exercise of judicial powers[11].

The Local Council Court Act

This is the Act establishing Local Council Courts for the administration of justice at the local level, to define the jurisdiction, powers, and procedures of the established courts and to provide for other related matters. Under Section 50, it repealed the Executive Committees (Judicial Powers) Ac[12]. Local Council Court means the local council court established under Section 3, at every village, parish, town, division, and sub-county level. The composition of the LCC at the village or parish shall consist of all members of the executive committee of the village or parish, whereas at town, division, or sub-county level, it shall consist of five members appointed by the town council, division council, or sub-county council on the recommendation of the respective executive committee, with at least two members of the town, division, or sub-county LCC being women [13]. The qualifications of members of an LCC at town, division, or sub-county shall be: a resident of the area of jurisdiction of the council for which the court is appointed, a person of high moral character and proven integrity, knowledgeable in the common local language of the community in question and in English, not a member of a local council, a member of Parliament, or a member of a statutory body, and not a member of another local council court [4]. An LCC may be held at a designated place within the limits of its jurisdiction for the convenient and speedy discharge of its business. The Chairperson of the court shall preside at the sittings of the court, and in the absence of the Chairperson, the Vice-Chairperson shall preside. The court shall sit as often as the business of the court requires for the speedy discharge of cases. The quorum of the court at any sitting shall be, in the case of a village or parish, five members including the person presiding, two of whom shall be women; and in the case of a town, division, or sub-county, three members including the person presiding, one of whom shall be a woman; and this shall be maintained throughout the court sitting [12]. Territorial jurisdiction of LCC shall extend only to causes and matters arising within the territorial area. The legal jurisdiction, in respect of any other written law, every LCC shall have jurisdiction for the trial and determination of causes and matters of a civil nature specified in

the Second Schedule to the LCCA, causes and matters of a civil nature governed only by customary law specified in the Third Schedule, causes and matters arising out of infringement of bye-laws and Ordinances duly made under the Local Governments Act, matters specified under the Children Act, and matters relating to land [14]. In any suit relating to causes and matters specified in the Second and Third Schedules, the jurisdiction of the LCC shall, in respect of causes and matters specified in the Second Schedule, be restricted to causes and matters where the value of the subject matter in dispute does not exceed one hundred currency points; the jurisdiction of the court in respect of causes and matters specified in the Third Schedule shall not be restricted by the monetary value of the subject matter in dispute. In any suit relating to causes and matters specified in the Second Schedule and in the Third Schedule, where the court awards compensation exceeding twenty-five currency points, the court shall refer the case to the Chief Magistrate of the area for the purposes of execution of the order [15]. The Chief Magistrate may, if he or she finds that the judgment award is grossly excessive, reduce the amount of the award taking into account awards in similar cases. Every suit shall be instituted in the first instance in a village LCC, if that court has jurisdiction in the matter, within the area of whose jurisdiction, the defendant actually resides at the time of the commencement of the suit, or where the cause of action in whole or in part arises. Without prejudice to any other powers, an LCC may make an order for any one or more of the reliefs like reconciliation, declaration, compensation, restitution, costs, apology, or attachment and sale, and in the case of infringement of a bye-law or Ordinance, impose a fine, community service, or any other penalty authorized by that bye-law or Ordinance [16].

The Family and Children Court

The Family and Children Court (FCC) is established in every district and any other lower government unit designated by the Chief Justice by notice in the Gazette, presided over by Magistrate Grade I and II. The jurisdiction of the FCC is to hear and determine criminal charges against a child subject to sections 93 and 94, and applications relating to child care and protection, and any other jurisdiction conferred on it by the CA or any other written law. The procedure of the Family and Children Court in all matters is in accordance with rules of court made by the Rules Committee [17].

The Police

The Uganda Police Force is established under Article 211 and such other police forces in Uganda as Parliament may prescribe by law. The Force shall be nationalistic, patriotic, professional, disciplined, competent, and productive, with its members being citizens of Uganda of good character. Its functions include the protection of life and property, the preservation of law and order, the prevention and detection of crime, and cooperation with civilian authorities and other security organs established under the Constitution, as well as with the population generally [18].

The Probation and Social Welfare Officers

A probation and social welfare officer are an authorized official mandated to perform the provisions of the Children's Act. The FCC may place a child under the supervision of a probation and social welfare officer while leaving the child in the custody of his or her parents or relatives. It is also the duty of the officer to prepare a written welfare report in respect of a child before making a supervision order or a care order. The probation and social welfare officer can make a home visit and interview the parents of the child concerned before making a welfare report. Their duty is to enforce a supervision order and provide child and family counseling before, during, and after the child's return, gaining the assistance of those in the community who can help in the process of resolving the problems which caused the care order to be made [19]. Where a probation and social welfare officer is informed or has reasonable cause to believe that a child who lives or is found in their district is suffering or is likely to suffer significant harm, they shall make inquiries to decide whether to act to safeguard or promote the child's welfare. If the court, after a charge has been admitted or proved, is considering making a detention or probation order, a written social background report is prepared by a probation and social welfare officer and shall be taken into account by the court before making the order. The report may include, among other things, the social and family background, the circumstances in which the child is living, and the conditions under which the offense was committed, and these are also recorded by LCC on request of FCC [20].

The Rehabilitation Centres

A rehabilitation centre is a remand home, which is a place declared by the Minister to be a remand home under Section 91 or any other place declared to be a remand home under any other enactment. Where a child is not released on bail, the court may make an order remanding or committing him or her in custody in a remand home named in the order, situated in the same area as the court making the order. If there is no remand home within a reasonable distance of the court, the court shall make an order as to the detention of the child in a place of safe custody as it deems fit. The local government council can provide an appropriate place of custody; and before making an order remanding or committing a child in a remand home, the court shall ensure the place is suitable for the child's care and protection[21]. Before committing a child to custody, the court shall ascertain that there is a place readily available. Pending the establishment of remand homes, the Minister may declare any establishment as a remand home. Section 96(1) provides that the Minister shall establish a National Rehabilitation Centre for

Children and any other centers deemed necessary. These centers shall serve as places for the detention, rehabilitation, and retraining of children committed there. The National Rehabilitation Centre for Children, known as Kampiringisa Boys' Approved School, is used as the detention center with a separate wing for girls, in addition to Naguru Remand Home. These centers work hand in hand with LCC[21].

Non-governmental Organizations

An NGO is an organization established to provide voluntary services, including religious, educational, literary, scientific, social, or charitable services to the whole community or any part of it. NGOs in Uganda are governed by the NGO Act. The NGO Registration Act was amended by the NGO Registration (Amendment) Act. The NGO Regulations were published in 1990. NGOs play a critical role in the development of a country. In Uganda, NGOs work in areas of service delivery, supplementing the government, and assisting some LCCs, while others focus on advocacy with a general aim of improving the legal, policy, and institutional framework of the country. The NGO sector in Uganda is among the largest employers and taxpayers, thus providing direct and indirect support to livelihoods and facilitating development. Despite their importance, NGOs in Uganda face challenges from regulating agencies, laws and policies governing their regulation, as well as internal NGO challenges [22]].

The Advocates

The Constitution provides that the next-of-kin, lawyer, and personal doctor of a person charged with an offense shall be allowed reasonable access to that person and shall be permitted to appear before the court in person or, at that person's own expense, by a lawyer of his or her choice. An Advocate means any person whose name is duly entered on the roll and entitled to practice as such. In Uganda, under the law, no party to proceedings before a local council court may be represented by an advocate except in proceedings dealing with the infringement of byelaws in LCC. Section 95(3) of the relevant legislation states that the court shall ensure the contents of the report are made known to the child and that a copy of the report is provided to the child or the child's legal representative [23].

The Resident District Commissioner

The office of the Resident District Commissioner (RDC) is established in each district, and the RDC is a senior civil servant appointed by the President under Article 203. The RDC's functions include coordinating the administration of government services in the district, advising the district chairperson on matters of national significance that may affect the district or its plans and programs, particularly the relations between the district and the government, and carrying out other functions as assigned by the President or prescribed by Parliament. The RDC also assists LCCs by advising the court among other duties [24].

The Administration of Local Council Courts in the Dispensing of Justice The Composition

Section 4(1) provides for the composition of local council courts of a village or parish consisting of all members of the executive committee of the village or parish. Subsection (2) states that the local council court of a town, division, or sub-county shall consist of five members appointed by the town council, division council, or sub-county council on the recommendation of the respective executive committee [12]. It was evident that the LCC is never constituted as envisaged, and their decisions are a nullity, as was enunciated in the case of Absolom Batumbya v. Sentalo Moses & Anor [25].

The Qualification of Members

The LCCA118 provides that membership of a town, division, or sub-county local council court is based on residence within the area of jurisdiction, a person of proven integrity and high moral character, and being knowledgeable, as was fortified in [26].

Dualism of Chairpersonship

The local council court of a village or parish consists of the same members of the executive committee of the village or parish. This impliedly and expressly infers that the Chairperson of the Village or Parish is the LCC Chairperson. This creates a conflict of interest and injustice, as was discussed in Every Child Ministries v David Lubaale [27]. An example of this was in Kijungu Village, where Mr. Baguma George doubles as chairperson for both the village and the LCC, and he confessed that the village had entrusted him with these responsibilities, which has caused a conflict of interest.

Jurisdiction

Section 9 provides for the territorial jurisdiction of LCC to extend only to causes and matters arising within the territorial area of the council for which the court is established and to causes and matters arising elsewhere if the defendant or accused is ordinarily resident within that area, whereas section 10 provides for the legal jurisdiction for the trial and determination of causes and matters of a civil nature specified, causes and matters of a civil nature governed only by customary law, causes and matters arising out of infringement of bye-laws and Ordinances, matters specified under the Children Act[28], matters relating to land, which was also elaborated in the case of [29]. The powers of court are that it may make an order for any one or more of the reliefs like reconciliation, declaration, compensation, restitution, costs, apology; or attachment and sale; and in the case of infringement of a

bye-law or Ordinance, impose a fine, community service, or any other penalty authorized by that bye-law or Ordinance.

Factors that limit the Ugandan administration of justice Procedural Irregularity

The procedure in the LCC is restricted in that the quorum shall be maintained throughout the court sitting, and the court shall hear every case before it expeditiously and without undue regard to technical rules of evidence or procedure, which was exemplified in the case of [26]. The LCC is also required, in exercising its jurisdiction, to be guided by the principle of impartiality without fear or favor and adhere to the rules of natural justice, in particular, ensure that each party is given an opportunity to be heard, given notice of the proceedings and of the case against him or her, accorded ample opportunity to call witnesses and to adduce such evidence as he or she requires to support his or her case.

Poor Record Management

It is a requirement that the LCC should properly record and keep its proceedings and where necessary may co-opt a person for the purpose of recording the proceedings, which shall include the serial number of the case; the statement of claim; the date of witness summons; the date of hearing of the case; the names and addresses of the claimant and his or her witnesses; the names and addresses of the defendant and his or her witnesses; a brief description of the case, as elaborated in [25].

Language and Ethnicity

The proceedings of the local council court and the records of those proceedings shall be in the language of the court, which shall be the language widely spoken in the area of jurisdiction, as discussed in [29]. Where any of the parties does not understand the language of the LCC, the court shall provide an interpreter, and the record of proceedings in a town, division, or sub-county local council court shall be in English.

Ignorance and Unprofessionalism

In Kiganda Lower Village, where I interacted with the Chairperson, I used Runyoro and English. I discovered that the Chairperson could not easily express herself in English, although she had a copy of the LCCA and admitted that they use the same. On asking her to interpret for me two sections in the LCCA, she failed totally. This was evidence that some Chairpersons lack interpretation skills and are even ignorant about some of the provisions in the statute, which hinders the administration of justice.

Politics

The local council court of a village or parish consists of the same members of the executive committee of the village or parish. This creates a conflict of interest hence political interference, which hinders fairness by the LCC. This was also reiterated by Zahara Nampewo, who illustrated that the interference in the judiciary by the executive relates to the actions, for example, of RDCs. These RDCs have infringed on the roles of other public offices; for example, they have ordered the police to stop working and have interfered with the functions of LC officials.

In Uganda, a mini survey conducted in Bunyoro Region in October 2009 by National Catholic Commission for Justice and Peace reported that Local Council leaders promote interests of Government but not people's needs; therefore, justice is compromised.

Migration

Another key factor found on the ground was that there is frequent movement of people from one place to another. Most LC officials are not landlords and thus keep on migrating in search of employment and better standards of living. This affects the registration books of the villages, and as such, no proper monitoring can be done by the LCC. Some other people who immigrate into urban areas come along with different ideas and habits like stealing; some are iron bar hitmen, hence increasing the crime rate, and this overwhelms the workload of the LCC.

CONCLUSION

Local council courts exist as a subordinate court with jurisdiction within the precincts of their localities, handling children matters, family, customary land disputes, and other light civil cases. However, the LCC has not become the panacea to the problem of the inaccessibility of justice for several reasons. First, there is the fusion of executive and judicial powers in the same persons, posing inherent dangers to the proper administration of justice. Second, these courts administer the basic principles of an alien law, limiting access to substantive justice. Third, there is general ignorance of the law among those who administer it due to lack of minimal training, leading to confusion in court procedures and judgments. Fourth, voluntarism as a basis for the operation of these courts tends to undermine their efficiency and effectiveness as deliverers of justice.

RECOMMENDATIONS

In the light of the analysis above and the challenges mentioned therein, the following recommendations are proposed:

1. The jurisdiction of LCC, especially regarding customary land, should be revised.

- 2. The substantive matters handled by both rural and urban LCC should differ based on prevalent cases and socioeconomic bases in both areas.
- 3. LCC officials should receive training on both procedural and substantive law to ensure adherence to legal procedures.
- 4. The doctrine of separation of powers should be adopted to mitigate conflicts of interest arising from the fusion of executive and judicial functions.
- 5. Marginalized groups should receive training on their rights and how to enforce them to increase their access to LCC.
- 6. LCC officials should receive training, guidance, and technical support on handling land disputes effectively.
- Qualification requirements for LCC offices should be revisited to ensure officials have the necessary skills and education.
- 8. Effective enforcement mechanisms should be put in place for decisions made by LCC.
- 9. LCC should receive proper funding from the government and other stakeholders to cover expenses such as stationery, stamps, and interpreters.
- 10. Clear demarcation of roles between LCC and other sister organs should be established to avoid interference.
- 11. Record management skills, ICT techniques, and necessary resources should be provided to LCC officials for efficient data keeping.
- 12. Alternative Dispute Resolution methods should be adopted by LCC to streamline dispute settlement.
- 13. Construction of court halls at all levels should be prioritized to provide suitable venues for court proceedings.
- 14. LCC should focus solely on customary matters, as observed in Nigerian Local Courts, to avoid handling a variety of cases without adequate skills.
- 15. LCC should be separated from partisan politics to ensure impartiality and fairness.
- 16. Legitimate elections should be held in villages and parishes to establish legitimate LCC in place.

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