

**THE EFFICACY OF LOCAL COUNCIL COURTS IN THE ADMINISTRATION OF
JUSTICE: A CASE STUDY OF NANSANA MUNICIPALITY - WAKISO DISTRICT**

BY

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THE GRADUATE SCHOOL IN PARTIAL FULFILLMENT FOR THE AWARD OF
MASTER OF LAWS DEGREE OF
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DECLARATION

DECLARATION

I, NATUKUNDA LILLIAN.....declare that **THE EFFICACY OF LOCAL COUNCIL COURTS IN THE ADMINISTRATION OF JUSTICE; A CASE STUDY OF NANSANA MUNICIPALITY - WAKISO DISTRICT** is my original work, except where acknowledged and that it has not been submitted before to any other university or institution of higher learning.

Signature.....[Signature]..... Date.....6/4/2022.....

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2017/HD09/1737U

APPROVAL

APPROVAL

This research has been done under my supervision and now, with my approval, it's ready for submission.

Signature 

Date: 06/04/2022

DR. RONALD KAKUNGULU-MAYAMBALA
(Supervisor)

DEDICATION

I dedicate this work to my dear family, for their continued support and love.

ACKNOWLEDGEMENT

I wish to extend my special appreciation to the various helpful people, who willingly and tirelessly helped me in compiling this information.

First and foremost I wish to extend my sincere thanks to my dear supervisor Dr. Ronald Kakungulu-Mayambala, who has tirelessly guided me throughout this research, and special thanks to my dear family and friends who have been very supportive at all times.

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LIST OF ACRONYMS

CEDAW	Convention on Elimination of all Forms of Discrimination against Women
CS	Civil Suit
DC	District Commissioner
DLC	Decentralized Local Governance
DPH	District Political Head
DRC	District Resistance Council
DSC	District Service Commission
HC	High Court
HLG	Higher-level Local Government Councils
ICCPR	International Covenant on Civil and Political Rights
LALF	Local Authority Loan Fund
LC	Local Council
LC 1	Local Council level one Village/Cell
LC 2	Local Council level two Parish/Ward
LC 3	Local Council level three Sub County/Division
LC 4	Local Council level four County/ Municipality
LC 5	Local Council level five District Council/City
LCCA	Local Council Courts Act
LCCs	Local Council Courts
LGA	Local Government Act
LLM	Master of Laws Degree
NPM	New Public Management
NRC	National Resistance Council
NRM	National Resistance Movement
RCs	Resistance Councils
RC1	Village Resistance Council
RCII	Muluka Resistance Council
RCIII	Gombolola Resistance Council
TIs	Traditional Institutions
UBOS	Uganda Bureau of Statistics
UDHR	Universal Declaration of Human Rights.
ULII	Uganda Legal Information Institute

UPC

Uganda People's Congress

VEC

Village Executive Committee

ABSTRACT

This research assessed the “Efficacy of Local Council Courts in Administration of Justice; A Case Study of Nansana Municipality - Wakiso District”. In Uganda the Local Council Courts were established to bring justice closer to the people. In 2006 the Local Council Courts Act was enacted to define the jurisdictional powers and procedures for the established Courts and to provide for other related matters. In 2007 the Local Councils Courts (Regulations) were issued to operationalize the Local Councils Courts in their functions.

The LCC elections in Uganda were last held was in 1996 and the office bearers were legally in office until the expiration of their term in 2001. From 2001 and the inception of the LCCA in 2006, no elections of LCCs were conducted up to 2018, therefore in absence of the elected leaders; the experiences, challenges, and people's perception in these LCCs is not very clear. Due to time constraints and resources this research was conducted in Nansana Municipality a town in the Central Region of Uganda, located in the Wakiso District with a rich topography of both urban and rural setting and densely populated.

Using mixed methods of research, the study findings were that LCCs are cost effective, accessible and flexible, speedy delivery of judgments and that they promote mediation and reconciliation. It was also established in the findings that the disputes handled by the LCCs among others include land wrangles, rent defaulters, family issues, enforcement of contracts, assaults and petty thefts and some criminal cases involving children such as actual bodily harm, criminal trespass and malicious damage to property. The research findings further revealed that access to justice in the LCCs was faced by a number of challenges such as lack of funding which exposed them to corruption and acceptance of gifts and facilitation that erode their impartiality, lack of stationary such as pens and papers to do the work, charging of exorbitant fees among others.

The research suggested some recommendations to address the faced challenges such as; sensitizing the general public and members of the courts the court fees payable for the various subject matters; through displayed the fees payable on the court notice board, doors/premises, judiciary website and issuance of brochures on the same to the general public, ensuring empowerment through training, capacity building and massive sensitization of the office bearers in the LCCs structures, ensuring revision and simplification by translation into local languages of existing legislation and laws on the LCCs and their mandates so as to equip both the populace and the members of these courts with knowledge on the same and to curb the problem of lack of awareness of the provisions of the law and procedures and increasing the budget for LCCs to ensure fulfillment of their mandate and to curb bribery and corruption and lack of stationary in these courts among others.

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CHAPTER ONE

THE EFFICACY OF LOCAL COUNCIL COURTS IN ADMINISTRATION OF JUSTICE; A CASE STUDY OF NANSANA MUNICIPALITY - WAKISO DISTRICT

1.0 Introduction

1.1 Background of the Study

This study critically analysed the efficacy of Local Council Courts (LCCs) in the administration of justice in Nansana Municipality. The study analysed the history of LCCs through decentralisation so as to ascertain the intended purpose for these courts and the propriety of the national laws providing for mandate of these courts and further examined the practice in these courts so as to know their effectiveness and the challenges faced.

The History of LCCs in Uganda is traced from the decentralisation. According to Mohammad Agus Yusoff et la, Decentralization can be defined as procedure or a tool for sharing powers and divide responsibilities among central government institutions and locally established political and administrative bodies with the objective improving public service delivery, induce economic and regional development, and to empower the political and other rights of different groups formed on ethnicity, language, region, religion etc.¹

Decentralization in most of the states has been as a response to the actual or potential regional conflicts. Decentralization in some states has been seen as a way of reconstructing states afflicted by conflict arising from ethnic diversity. The re-establishment of local government has been a key element in the post-conflict reconstruction, for example in Sierra Leone. Post-apartheid restructuring in South Africa emphasized the importance of sub-national levels by adopting the term “separate spheres of government” in its new constitution. The current reconstruction of Iraq – albeit largely involves a strong emphasis on elected local government.² In Rwanda was after the war and the 1994 genocide the leadership sought to decentralize governance and allow people have say in determining their socio-politico-economic destiny.³

¹ Mohammad Agus Yusoff, Athambawa Sarjoon & Mat Ali Hassan, *Decentralization as a Tool for Ethnic Diversity Accommodation: A Conceptual Analysis*, (2016 Vol. 9, No. 1) (Canadian Center of Science and Education),

https://www.researchgate.net/publication/296195510_Decentralization_as_a_Tool_for_Ethnic_Diversity_Accommodation_A_Conceptual_Analysis (Accessed on 1/6/2021)

² Nick Devas, *The Challenges of Decentralization*, (June 2005), page 2-3, <https://www.gov.br/cgu/pt-br/acao-informacao/institucional/eventos/anos-anteriores/2005/iv-forum-global-de-combate-a-corrupcao-1/arquivos/nickdevas-2.pdf> (Accessed on 28/6/2018)

³ John-Mary Kauzya, *Political Decentralization in Africa: Experiences of Uganda, Rwanda, and South Africa* New York (2007), page 9
<https://pdfs.semanticscholar.org/f98f/e5d287a755896c93a750822d016f408a37d6.pdf> (Accessed on 28/6/2018).

Uganda's decentralization was established before colonization and has passed through various phases to wit; the pre-colonial, the colonial phase, and the post-independence Local Governments.⁴ The pre-colonial governance plan changed with the British Colonial Government attempting to set up of African (Native) Authority in 1919, as the first local administrations.⁵ The African Native Authority Ordinance of 1919 provided for the powers and duties of African chiefs in the colonial administration. Under the Ordinance, chiefs were appointed at the village, sub-county and county levels with powers to collect taxes, preside over native courts, and maintain law and order. These chiefs were, however, accountable to the District Commissioner, the executive head of the district and the principal representative of the central government.⁶

During the colonial phase the Kingdoms which were the other administrative units operated as federal states within the system. Uganda had 11 districts and four Kingdoms by the time of independence in 1962. The 1962 Constitution of Republic of Uganda established a decentralized system with elements of both federalism and decentralisation in the governance system. While the kingdom of Buganda was granted federal status, others such as Ankole, Bunyoro, Toro and the territory of Busoga were accorded semi-federal status. The rest of the country, comprised of the districts of Acholi, Bugisu, Bukedi, Karamoja, Kigezi, Lango, Madi, Sebei and West Nile, were administered through Councils.⁷

The independence Constitution was abrogated in 1966. The successor Constitution of 1967 centralised powers. The overthrow of the post-independence Obote government by Idi Amin through a military coup led to the establishment of a military regime between 1971-1979 during which districts were dissolved and regional/provincial administrations led by Governors who were high-ranking military officers. The second Obote government (1980-1985) did not make any significant efforts to change the system.⁸ However in 1986 following civil war, the local communities elected from amongst themselves, councils to perform the duties of the defunct agents and organs of the old state since the NRM/NRA had no spare manpower to utilize as local administrators. The primary duty of these councils was to resist infiltration through a network of information gathering on the operations of the enemy and liaising with

⁴ Ibid.

⁵ Bruno Onzima, *Public Accountability: Explaining Variation across Local Governments in Uganda*, (2003), <https://bora.uib.no/bora-xmlui/bitstream/handle/1956/6896/109006750.pdf?s>, (Accessed on 29/6/2018).

⁶ Henry Ojambo, Decentralisation in Africa: A Critical Review of Uganda's Experience, *Potchefstroom Electronic Law Journal*, Volume 15, Issue 2, 2012, page 72/569, <https://www.ajol.info/index.php/pelj/article/viewFile/81278/71466> (Accessed on 28/6/2018)

⁷ Ibid., Page 73/569.

⁸ Ibid., Page 75/569.

the NRM intelligence organs hence the name "Resistance Councils". The Resistance Councils were comprised of members with both administrative and security mandates in their areas of jurisdiction.⁹

Through the Resistance Councils the rural residents were able to participate directly in politics, particularly in the general meetings at a village level.¹⁰ The Resistance Councils formed at the time, worked with less interference from the Central Government and derived their mandate from the Resistance Councils Bill of 1987 and as was amended.¹¹ The post-independence phase was witnessed with a change from decentralisation (1962-1966) to centralization in 1967 to 1985 and in 1986 back to decentralisation. The current phase of decentralisation was institutionalized by the 1995 Constitution of the Republic of Uganda and the 1997 Local Governments Act which gave it a legal backing following a series of political and administrative commissions.¹²

According Paper 1 by National Resistance Movement, dated the 15th day of December 1986, signed by the Administrative Secretary Jacob K. Asiimwe (then),¹³ the structure of the Resistance Councils started with a village/cell, the *Muluka* and then the *Gombolola*. Under the Village, there was a Village Resistance Council (RC1) of all residents of the village including displaced persons. The RC1 was to meet once a month and responsible for discussing and resolving various problems concerning the village, it was further responsible for making relevant proposals for community development projects and implementation (projects included construction of local bridges, roads, repairing schools among others). The Resistance Council sitting an electoral village was to elect a Village Executive Committee (VEC). The membership to the village executive committee comprised of Chairman, Vice Chairman, Secretary, Secretary for Finance, Secretary for Defence, Secretary for Youth, Secretary for Women, Secretary for Public and Information and Secretary for Rehabilitation and Mass Communication. The chairman of the VEC was also the Chairman of the RC1. The VEC was answerable to the RC1, a vote of no confidence against the chairman of the village led to the dissolution of the entire village executive and fresh elections would be held within 7 days. The Village Resistance Executive Committee met at least once a week and the minutes of the committee (VEC) and Council meetings would be submitted to the *Muluka* (RC11) for action and to the *Gombolola* (RC111) for information.¹⁴

⁹ Ibid.

¹⁰ Per Tidemand, *The Resistance Councils in Uganda a Study of Rural Politics and Popular Democracy in Afrika* (1994), Volume 1, page 67,

<https://bora.uib.no/bora-xmli/bitstream/handle/1956/6896/109006750.pdf?s>, (Accessed on 29/6/2018).

¹¹ Ibid., page 93.

¹² Onzima, *Public Accountability: Explaining Variation across Local Governments in Uganda*, (2003).

¹³ Paper 1 by National Resistance Movement, dated the 15th day of December 1986, Accessible in the Centre for Basic Research Library in Kololo.

¹⁴ Ibid.

The *Muluka* comprised of the *Muluka* Resistance Council (RC11) which comprised of the village executive committee and responsible for discussing and implementing recommendations from RCI. The *Muluka* Resistance Council met once a month and the *Muluka* Executive Committee meet once every two weeks. The minutes of the meetings were regularly submitted to the *Gombolola* Resistance Council for action.¹⁵

The *Gombolola* Resistance Council comprised of all *Muluka* Resistance Committees. The *Gombolola* Resistance Council sitting as an electoral college elected the *Gombolola* Resistance Committee. The *Gombolola* Resistance Council met once a month and the *Gombolola* Executive Committee met once in every two weeks. The minutes of the meetings were regularly submitted to the District Resistance Council for action and to the District Political Head for information.

The RC's among other functions were to assist the Police, Army and Chiefs to maintain law and order. No criminal arrests were carried out by the police, army and chiefs in an RC's area of jurisdiction without the knowledge of the RC chairman. As the area under the NRA expanded, the people's committees grew from villages to sub- county levels and for proper mobilization an RC was limited to forty houses.¹⁶

The National Resistance Army (NRA) after coming into power in 1986 deployed new methods of galvanizing support for and reaching consensus on decentralized governance. Essentially two methodologies to wit; survey and enquiry and piloting were used to gauge and galvanize support for the decentralization policy of the National Resistance Movement. In 1987 a Commission of enquiry was established under the leadership of Mahmood Mamdani to conduct survey, enquiry and consultations at all levels to establish what form of local government should be operated in the country. The Commission of Enquiry recommended the Resistance Councils System as democratic organs of the people.¹⁷ In 1993 the Local Government (Resistance Councils) Statue was passed firmly providing a legal basis for Resistance Councils in the country. The RC Statute legalized the existence of Resistance Councils and integrated them into the system of local governance structure. The RC Statute marked the very beginning of the formal decentralisation process under the Movement government by transferring such powers as planning, decision-making and the administration of justice to the community-based Resistance Council

¹⁵ Ibid.

¹⁶ Mahmood Mamdani and Joe Oloka-Onyango, *Studies in Living Conditions Popular Movement and Constitutionalism; Expediit Ddungu, Popular Forms and the Question of Democracy; The case of Resistance Councils in Uganda*, (1993), page 374 and 375.

¹⁷ Kauzya, op.cit, p 7.

system.¹⁸ In 1995 a new Constitution, providing for decentralized governance was promulgated after nation-wide consultations.¹⁹

The Resistance Councils were to use their mandate in resolving local problems within their local jurisdictions thus taking on the function of administering justice. The RC's since their inception in 1987 have gone through necessary reforms including but not limited to change of name. In 1988 through the Resistance Councils and Committees (Judicial Powers) Statute, the Councils were formally given judicial powers, which were promptly extended to the whole country in these courts people had access to justice where, there were issues that could not be resolved by the family or clan. The system gave communities an unprecedented freedom to manage their own affairs without outside interference. Members of the communities could create and enforce by-laws, settle cases and customary land disputes without resorting to formal courts.²⁰

In 1997 and in accordance with the 1995 Constitution of the Republic of Uganda, the Local Government Act was enacted cementing decentralisation. In the bid to further institutionalize the local governance, the Executive Committees (Judicial Powers) Act, Cap 8 which initially provided for the Local Council Courts was repealed by the Local Council Courts Act, 2006 (LCCA) under Section 50.²¹

Under the LCCA, Local Council Courts are mandated with the administration of justice at the local level and the Act defines their jurisdiction, powers and procedures of the established courts and provides for other related matters.²² Ideally the LCCA seemed to introduce a semblance of the *Gachacha* Courts System of Rwanda, which has been largely hailed as being successful in resolving local disputes within their jurisdiction.

Today the structure of local government in Uganda takes different forms depending on whether the administrative area in question is rural or urban. Other than Kampala City, which has a special local government administrative structure,²³ the local government system is comprised of a five-tier structure where, in rural areas, the village council (LC1) forms the lowest level, followed by the parish council

¹⁸ Ojambo, op.cit,p 76

¹⁹ Kauzya, op.cit, p 7.

²⁰ Zahara Nampewo, Uganda's Local Council Courts and Access to Justice for Local Users; Reality or Rhetoric; *East African Journal of Peace and Human Rights*, Vol. 22, No.1 2016, page 5.

²¹ Local Council Courts Act, 2006

²² Long Title, Local Council Courts Act, 2006.

²³ Kampala, as the capital city, is governed under a special legislation, Kampala Capital City Authority Act of 2010 (KCCA). Though the City Council is the highest authority under KCCA, the executive functions are discharged by the Chief Executive Officer, who is appointed by the central government, while the Lord Mayor is the chief political officer and is elected, just like his counterparts in other districts, the LC5.

(LCII), then the sub-county council (LCIII), the county council (LCIV), and at the top (the district) the district council (LCV). On the other hand, in urban districts the structure begins with the village council (LC1), then the ward or parish council (LCII), the municipal or town division (LCIII), the municipality (LCIV) and the district council (LCV/mayor).²⁴

The LCCs are composed of all members of the village who are 18 years and above, elected from among themselves a Chairperson and an executive to lead the process of their decision-making and their implementation. The Local Council Courts have jurisdiction to try and determine causes and matters of a civil nature specified in the Second Schedule to this Act; and criminal jurisdiction to try a child for offences provided under the Act.²⁵ They can grant a vast of reliefs as stipulated in the Act for the ends of justice to meet.²⁶

The LCCs were established to promote a more accessible, cost effective and popular justice system, they are an important issue in rural and conflicted parts of the country where formal justice services are hard to access. However these LC courts are faced with challenges; lack of knowledge and understanding of the offences within their local jurisdiction, gender bias and discrimination, cruel punishments, unfair trial procedures, bribes and corruption which hinder their mandate of administering justice at the local level.²⁷

The study findings revealed that the community members know about the existence of these courts in their localities and one of the respondents had this to say;

“.....I know that we have LC Courts in my village Gombe Ward, but I don’t know of any laws about them, I only know that they were put in place by the Government of Uganda to help us with our small disputes in the community.....”²⁸

“.....these LC Courts are good, they handle our problems and give us remedies without going to formal courts where matters take a long time to be decided.....in February this year I had a dispute with my neighbor whom I had lent 200,000/= and she had refused to give it back so I went the LCI Court Gombe wherein she was ordered to pay me my money, which she did pay in April this year.....”²⁹

²⁴ Ojambo, op.cit, p 78.

²⁵ Section 49, 92 (1 and2), Local Council Courts Act, 2006. .

²⁶ Section 13, Ibid.

²⁷ Nampewo, op.cit,p 9.

²⁸ Mr. Mpiima Charles, a resident of Gombe Ward (LCII Court) in an interview conducted on the 30th August 2019

²⁹ Ms. Nakimuli Teddy a resident of Gombe village (LC1) in Gombe Division in an interview carried out on the 30th day of August 2019.

Despite the existence of the Local Council Courts and laws regulating them, in Uganda the LC1 leaders were elected in July 2018 across the country after a period of 16 years.³⁰ This definitely affected the LC Courts in the dispensation and administration of justice at the local level since most elected leader had since passed on leaving vacant positions and others held office illegally since their term had expired. There is no literature as to how these local council courts were performing their stipulated mandate in absence of validly elected leaders and quorum. Absence of elected leaders and mismanagement of disputes and not following the guidelines and regulations escalate conflicts in the communities and hinder delivery and administration of justice at the local level. Under the LCCA the elected leaders hold office for a term of five years.

The research findings revealed that the LCI and LC II courts had been operating and passing judgments despite their unconstitutional existence and yet the few people who access justice in these courts were not in position to challenge such decisions in higher courts.

One of the Respondents in Ttula had this to comment.

“.....I came to Kawempe from Masaka in 2000 and since then the LC 1 Court of the area (Ttula) has been operating and working on our disputes.....in 2005 I had a family issue in that court which was resolved in my wife’s favour...”³¹

However the decisions which were made by these courts in absence of validly elected leaders were held to be a nullity as was discussed in the case of *Ocitti v. Okello*, *Miscellaneous Application No. 054 of 2014* seeking for revision of the order of the Chief Magistrate’s ruling in Misc. Application No. 182/2010 and the LC II Court Judgment of LC II of Amar Local Council II Court of Koch Goma Sub county Nwoya District, the court observed that the proceedings in the Local Council II court all took place on 1/5/2010, and there was no evidence that the applicant was summoned to appear in court; contrary to rules of natural justice. The court found this to be a procedural impropriety and held that the Local Council I and II courts were not constitutionally and legally constituted and that the proceedings were a nullity.

³⁰ Online Daily Monitor, *Take Local Council elections seriously* July 9 2018, <http://www.monitor.co.ug/OpEd/Editorial/-Local-Council-elections-Electoral-Commission-NRM/689360-4653858-nnel8oz/index.html> (Accessed on 20/6/18)

³¹ Mr. Kisito Abdul, resident of LC1 Ttula, Nabweru Division in an interview conducted on 29th August 2019

This study explored the efficacy of local council courts in administration of justice. Guidelines and regulations were consulted. The study also intended to come up with possible recommendations on how to improve on the existing guidelines and regulations in enhancing the mandate of LCCs in justice administration.

1.2 Statement of the Problem

The LCCs are established by Local Council Act, 2006³² with the mandate of administering justice at the local level.³³ These courts are established to bring justice closer to the people and to demystify the idea of justice and the law in the eyes of the average Ugandan.

However despite the existence of the LCCs and laws regulating them, the LCI and LCII leaders were elected in July 2018 across the country after a period of 16 years.³⁴ The last time elections at these levels were held was in 1996, and the office bearers were legally in office until the expiration of their term in 2001. There is no literature as to how these local council courts were performing their stipulated mandate in absence of legally elected leaders. Therefore in absence of the elected leaders; the experiences, challenges, and people's perception in these LCCs is not very clear. The failure to have in place duly constituted LCCs led to passing of judgments without quorum which ultimately affected these Courts in the dispensation and administration of justice at the local level.

In the case of *Ocitti v. Okello, Miscellaneous Application No. 054 of 2014*, Justice Margaret Mutonyi held that the decision of LC II court of Amar parish made on 1/5/2010 was null and *void abinitio*. The Justice observed that the courts of LC1 and LCII did not have judicial powers since they were not fully constituted in accordance with the provisions of the Constitution of the Republic of Uganda and they will have judicial power after the Uganda Electoral Commission conducts the elections of the executive members of the committees and the only court which was duly constituted under LCCA was the LC III which is an appellate court under *S. 32(1) (2) (b)* of the LCCA 2006.

It is also widely alleged that most LCCs are in places marred by massive corruption which affects justice delivery.

It is against such prevailing circumstances that led to the need to ascertain whether the LCCs in Uganda with a case study of Nansana Municipality are performing their mandate of administering justice at the grassroots/ local level. This study explored the effectiveness and challenges of LCCs in administration of justice at the local level.

³² Section 3 LCCA, 2006.

³³ Long title of the Local Council Courts Act, 2007.

³⁴ Online Daily Monitor, *Take Local Council elections seriously*, July 9 2018, (Accessed on 20/6/18).

1.3 Objectives of the Study

1.3.1 General Objective

The overall objective of this study was to critically evaluate the efficacy of Local Council Courts in administration of justice in Uganda in Nansana Municipality – Wakiso District.

1.3.2 Specific Objectives

The study was guided by the following specific objectives: -

- a) To find out factors responsible for promoting and hindering Local Council Courts from administering justice in Nansana Municipality.
- b) To evaluate the effectiveness of the legal framework on Local Council Courts in Uganda.
- c) To make recommendations for effectiveness of Local Council Courts in administering justice in Nansana Municipality and Uganda at large.

1.4 Research Questions

This study adopted the following questions: -

- a) What are the factors responsible for promoting and hindering Local Council Courts from administering justice in Nansana Municipality?
- b) How effective is the legal framework on Local Council Courts in Uganda?
- c) What are the recommendations for effectiveness of Local Council Courts in administering justice in Nansana Municipality and beyond?

1.5 Scope of the Study

The interest was for this research to be carried out across the country; but due to the limited time and resources, the research was limited to the efficacy of LCCs in administering justice in Nansana Municipality.

Nansana Municipality is comprised of four Divisions to wit; Nansana Division, Nabweru Division, Gombe Division and Busukuma Division. These Divisions came into existence following the formation of Nansana Municipal Council under Statutory Instrument No. 47 of 2015 on the 9th day of September 2015 under Regulation 32(2) of the Third Schedule of the Local Government Act of 1997. The total population of Nabweru Division, Busukuma Division, Gombe Division and Nansana Division as of 2014 is 106,265, 37,730, 76,639 and 144,490 respectively (UBOS-NPHC 2014).

Nansana is a town in the Central Region of Uganda, located in the Wakiso District and one of the five municipalities in Wakiso district. Nansana Municipality is located along Kampala - Hoima Road. The town is approximately 12 kilometers by road, North-West of Kampala. In 2002, the national population census put Nansana's population at 62,044. In 2010, the Uganda Bureau of Statistics (UBOS) estimated the town's population at 86,200. In 2011, UBOS estimated the mid-year population at 89,900. In 2014, the national population census put the population at 365,124. Nansana is a high-density working class neighborhood. There are 130 villages in Nansana Municipality. The rich topography of both urban and rural setting of Nansana Municipality is what informed the researcher to have a keen interest of carrying out the research in the area.

1.6 Significance of the Study

This study is important in a number of ways including but not limited to the following: -

- It contributes to the existing literature on the role of LCCs in administering of justice and serve as an impetus for further research into similar areas.
- The study findings also serve as a recommendation for policy makers on the effective way to strengthen justice administration of through formulation of appropriate policies and guidelines in Local Governments in Uganda.
- This research thesis is significant as a partial requirement by Makerere University for the researcher to qualify for the award of a Degree in Master of Laws (LLM).

1.7 Justification of the Study

The 1995 Constitution of Republic of Uganda, provides for participatory democracy and decentralized local government system as a leadership element that far reaches at grassroots level.³⁵ The government on realizing that all community conflicts could not be handled entirely by the central government, enacted the Local Council Courts Act, 2006, establishing the Local Council Courts mandating them with administration of Justice at the local levels; defined jurisdiction and procedures for the established Courts and other related matters and in 2007 the Local Councils Courts (Regulations) were enacted through the responsible Ministry.

There is a continued mix of administrative and judicial roles at the LCCs; courts are conducted informally as meetings in which both executive leadership and administrative issues are mingled up with judicial roles thus making it difficult to observe procedural rules on issues of quorum, jurisdiction, impartiality, fair hearing among many others procedures. The LCCs are also wanting in terms of

³⁵ Articles 126 (1) and 127 of the 1995 Constitution of Republic of Uganda.

application of principles of natural justice, gender responsiveness, and lack of ethics and professionalism in handling cases with respect of court process and procedures normally the entire community is invited or allowed to listen in on the court sessions making it difficult to observe procedure, intimidating witnesses and the would-be witnesses.

The LCCs elections in Uganda were last held was in 1996, and the office bearers were legally in office until the expiration of their term in 2001. From 2001 and the inception of the LCCA in 2006, no elections for LC1 and LCII Courts were conducted up to 2018. Since the inception of the LCCA, the experiences, challenges, and people's perception in these LCs is not very clear. Thus a need for this study to whether assess the effectiveness of these Courts on their mandate of administering justice at the local level.

Research on Uganda's local government system has, for the most part, focused on the provision of health care services, education, the fiscal independence (or lack thereof) of local government bodies, and how the direct election of local leaders has strengthened democracy.³⁶ While these are all vital components that need to be considered in determining the role that local governments can be trusted to play in the current leadership organization, one element that has been missing is determining the usefulness, effectiveness and the potential of LCCs in promoting justice in society hence this study aimed at assessing the effectiveness and challenges of the LCCs in the administration of justice at the grass root

1.8 Theoretical Framework

The quest for justice by mankind is a very old phenomenon that has existed since time immemorial. A majority of people in Uganda have always perceived justice as meant for only those with a high social standing in society and thus far away from them. However, the NRM government from the time of its inception has always taken incentives at bringing access to Justice closer to all people at the grassroots.

Access to justice is a fundamental human right guaranteed by the international Human Rights law under the Universal Declaration of Human Rights and other international treaties to which Uganda is a signatory. In observance of her obligations under these international treaties Uganda provides for guarantees for access to justice through both formal and informal justice mechanisms

Literally, 'Access' may be perceived in terms of mere contact, or right of entry or right to use. In the context of the study, access is conceived in a comprehensive sense to include all aspects of contact, entry

³⁶ For example, a report on Mbale district states that: "[In] the Financial Year 2000/01 the Municipal Division had set the minimum graduated tax payable by all residents in the Municipality to be 11,000/-. However, the Municipal authorities were unable to enforce it due to a presidential declaration during campaigns that the minimum tax countrywide should be 3,000/- (MoF, 2002:45).

and use of the legal system. Any qualification given to the concept of justice as social or economic presupposes the existence of other forms.³⁷

The United Nations defines Access to Justice as a process which enables people to claim and obtain justice remedies through formal or informal institutions of justice, and in conformity with human rights standards. 38

Justice is an ideal of accountability and fairness in the protection and vindication of the rights and the prevention and punishment of wrongs. It implies regard for the rights of the accused, for the interest of victims and for the wellbeing of society at large.³⁹

In a strict legal sense, the concept of justice derives from law itself as one of its attributes.⁴⁰ Justice in that sense refers to standards of rights set or defined by (substantive and procedural) law and enforced by specific institutions (justice delivery system), with the State bearing primary responsibility for the protection of those rights. In order to acquire its legitimacy and the force of law, it is important that legal (de jure) justice does to a large extent mirror social ideals and aspirations of rights for all people. In essence, the two forms of justice should be mutually reinforcing, with the role of law being to strengthen the promotion and protection of social rights and therefore social justice from which the former derives its legitimacy. This is the core on which other forms and components of justice such as safety and security, economic and political justice are founded.

Uganda guarantees to access to justice in her 1995 Constitution where it emphasizes that justice shall be administered in further of the aspirations of the people.⁴¹ The government of Uganda further in observance of her obligations under of the international treaties and on realization that community conflicts and justice could not be entirely handled by the central government, enacted the Local Councils Act 2006, whose operationalization began on 8th June, 2006 establishing the Local Council Courts to administer justice at the local levels; The Act also defines the Jurisdictional powers and procedures for the established Courts and other related matters. The Local Councils Courts (Regulations) 2007 were also enacted to operationalize the LCCs.

³⁷ Nampewo, op.cit, p. 1-2

³⁸ United Nations Development Programme (UNDP), Programming for justice; Access to All. A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice.

³⁹ Ibid., page 3

⁴⁰ In Legal Theory, law is defined by its attributes as (i) a power relation (ii) a standard of justice (iii) a social process.

⁴¹ Articles 126, 127 and 127 of the 1995 Constitution of Republic of Uganda.

Justice may be administered through formal and informal mechanisms. Justice under the formal mechanisms is fairly expensive, inaccessible to all citizens and time consuming, legal services are confined to towns and municipalities for convenience reasons. Informal justice mechanisms have taken precedence for being accessible and less expensive. The formal justice system sets specific definitions of offences, right, obligations, remedies and particular processes of its administration. The informal /traditional justice system is inclined towards reconciliation and dispute resolution; trust, voluntarism, truth, compensation, restoration and reconciliation varying from community to community. LCCs are part of the formal justice system but carry features of traditional or informal justice mechanisms.⁴²

The Local Council Courts constitute an alternative means of accessing justice at the grass root in the communities. In that regard, the LC courts not only reduce the workload of formal courts and other agencies, but are also easily accessible, cheap and they dispense quick justice.

However, since the inception of the LCCs and proceeding to the enactment of the Local Council Court's Act 2006 and Regulations 2007 thereunder, the term of duly elected LCC member expired in 2001 from 1996, the access, the experiences, challenges, and people's perception of these LCCs is not very clear. The challenges put forward by different researchers vary from community to another. The LCCs are ridden with constraints that render them, inaccessible and ineffective in the administration of justice at the local level as mandated.

2.0 Literature Review

This part of the chapter provides a review on the existing literature on decentralization and development of Local Council Courts in Uganda. This study contributes to exiting literature in the area of decentralization when it comes to the effectiveness of LCCs in the administration of justice and was purposed to address the existing gaps in the available literature. This study contributes to literature on the bottlenecks curtailing effective administration of justice by LCCs in Nansana Municipality, Wakiso district.

2.1 Decentralization, development and operation of Local Council Courts in Uganda

Uganda's decentralisation passed through various phases: the pre-colonial, the colonial phase, and the post-independence Local Governments. The pre-colonial governance plan changed with the British Colonial Government attempting to set up of African (Native) Authority in 1919, as the first local administrations.⁴³ The African Native Authority Ordinance of 1919 provided for the powers and duties

⁴² Nampewo op.cit, p1-4.

⁴³ Onzima, op.cit.

of African chiefs in the colonial administration. Under the Ordinance, chiefs were appointed at the village, sub-county and county levels with powers to collect taxes, preside over native courts, and maintain law and order. These chiefs were, however, accountable to the District Commissioner, the executive head of the district and the principal representative of the central government.⁴⁴

During the colonial times other administrative units were kingdoms which more or less operated as federal states within the system. By the time of independence in 1962 Uganda had 11 districts and four kingdoms. The independent Constitution of 1962 established a decentralized system with elements of both federalism and decentralisation in the governance system. While the kingdom of Buganda was granted federal status, others such as Ankole, Bunyoro, Toro and the territory of Busoga were accorded semi-federal status. The rest of the country, comprised of the districts of Acholi, Bugisu, Bukedi, Karamoja, Kigezi, Lango, Madi, Sebei and West Nile, were administered through Councils.⁴⁵

The independence Constitution was abrogated in 1966. The successor Constitution of 1967 centralised powers. The overthrow of the post-independence Obote government by Idi Amin through a military coup led to the establishment of a military regime between 1971-1979 during which districts were dissolved and regional/provincial administrations led by Governors who were high-ranking military officers were established. The second Obote government (1980-1985) did not make any significant efforts to change the system.⁴⁶

In 1986 following civil war, the NRM/NRA had no spare manpower to utilize as local administrators. Accordingly, local communities were requested to elect from amongst themselves, councils to perform the duties of the defunct agents and organs of the old state. However, the primary role of these councils was to resist infiltration through a network of information gathering on the operations of the enemy and liaising with the NRM intelligence organs hence the name "Resistance Councils. Resistance Councils were comprised of members with both administrative and security mandates in their areas of jurisdiction.⁴⁷ The Resistance Councils were seen as a system of popular democracy, since they were to enable the vast majority of especially rural residents to participate directly in politics, particularly in the general meetings at a village level.⁴⁸ The Resistance Councils formed at the time were supposed to function according to the legislative framework stipulated in the Resistance Councils Bill of 1987 and the various amendments. They worked with less direct interference from the central government.⁴⁹

⁴⁴ Ojambo, op.cit, p72

⁴⁵ Ibid., p 73.

⁴⁶ Ibid. p 75.

⁴⁷ Ibid.

⁴⁸ Per Tidemand, op.cit, p 67.

⁴⁹ Ibid.,p 93.

The National Resistance Army (NRA) after coming into power deployed new methods of galvanizing support for and reaching consensus on decentralized governance. Essentially two methodologies to wit; survey and enquiry and piloting were used to gauge and galvanize support for the decentralization policy of the National Resistance Movement. In 1987 a Commission of enquiry was established under the leadership of Mamdani to conduct survey, enquiry and consultations at all levels to establish what form of local government should be operated in the country. The Commission of Enquiry recommended the Resistance Councils System as democratic organs of the people.⁵⁰ In 1993 the Local Government (Resistance Councils) Statue was passed firmly providing a legal basis for Resistance Councils in the country. The RC Statute legalized the existence of Resistance Councils and integrated them into the system of local governance structure. The RC Statute marked the very beginning of the formal decentralization process under the Movement government by transferring such powers as planning, decision making and the administration of justice to the community-based Resistance Council system.⁵¹ In 1995 a new Constitution, providing for decentralized governance was promulgated after nation-wide consultations.⁵² The RC's since their inception in 1987 have gone through necessary reforms including but not limited to change of name. In 1988 through the Resistance Councils and Committees (Judicial Powers) Statute, the Councils were formally given judicial powers, which were promptly extended to the whole country in these courts people had access to justice where, there were issues that could not be resolved by the family or clan.⁵³

In 1997 and in accordance with the 1995 Constitution, the Local Government Act was enacted cementing decentralization. In the bid to further institutionalize the local governance, the Executive Committees (Judicial Powers) Act; Cap 8 which initially provided for the Local Council Courts was repealed by the Local Council Courts Act, 2006 under *Section 50* of the Act. Under the Local Council Courts Act, Local Council Courts are mandated with the administration of justice at the local level and the Act defines their jurisdiction, powers and procedures of the established courts and provides for other related matters.⁵⁴

According to Onzima despite decentralization's promise for more accountable government, results have been mixed at best. The literature on decentralization contains many examples where decentralization has not led to greater accountability. In Uganda, there some districts are reported to be performing better

⁵⁰ Kauzya, op.cit, p7.

⁵¹ Ojambo, op.cit, p76.

⁵² Ibid., p 7.

⁵³ Nampewo, op.citp. 5.

⁵⁴ Long Title, Local Council Courts Act, 2006.

than others. Gulu and Luweero districts were for instance reported to be the best performing districts; while others performed poorly.⁵⁵

Onzima's research focuses mostly on why do some local governments have better accountability performance than others and a comparative study was conducted focusing on minority of cases in which adequate powers and resources were provided. The research objectives were to find out the different dimensions/indicators/forms of accountability in local governments, factors to promote or those that hinder accountability in local governments and why do some local governments thrive while others fall short of accountability and how can accountability performance can be improved in local governments that have fallen short of accountability with the case studies of Entebbe Municipal Council and Maracha District Local Governments.⁵⁶ The current study is focusing on the efficacy of the local council Courts in administering justice as the grass root in Nansana Municipality, Wakiso district which is the gap this study intends to address.

According to Steiner in Ugandan decentralisation reform initiated in 1992 is exceptional among developing countries in terms of the scale and scope of the transfer of power and responsibilities to the local level. The current decentralisation was first enshrined in the Local Government (Resistance Councils) Statute of 1993 and later in the Constitution of Uganda of 1995 and the Local Governments Act of 1997. The local government system is formed by a five-tier pyramidal structure, which consists of the village (LC1), parish (LC2), sub-county (LC3), county (LC4), and district (LC5) in rural areas, and the village (LC1), ward or parish (LC2), municipal division, or city division (LC3), municipality (LC4), and city (LC5) in urban areas. The Resistance Councils which were organized in a five tier pyramidal structural were established country-wide in 1986 after the coming into power of the NRM government. Resistance Councils were renamed into Local Councils (LC) with the 1995 Constitution of Republic of Uganda. In order to empower local governments to meet their responsibilities, local governments are entitled to levy, charge, and collect local taxes and fees, and to receive a number of intergovernmental grants. With regard to taxes and fees, district and urban local governments are allowed to impose property tax, several forms of non-tax revenue (market dues, trading licenses, parking fees, education contributions, etc). According to the law, proceeds from local taxes and fees are retained locally and shared between different levels of local government and administrative units but not with the Centre. However, since these proceeds are extremely low, local governments receive

⁵⁵ Onzima op.cit,

⁵⁶ I bid.

intergovernmental transfers from the centre in the form of unconditional, conditional, and equalization grants.⁵⁷

Steiner's research was about qualitative assessment of the potential of the Ugandan decentralisation reform for poverty alleviation. According to him If decentralisation was implemented and functioned as it is provided for by law, it should offer much potential for an impact on poverty through popular participation, responsive policy-making, and efficient service provision and that a number of serious challenges to the proper implementation of the decentralisation reform were identified, which give reason to concerns about whether the poverty reducing potential can indeed be realized.⁵⁸ This research is silent about the efficacy of the local council courts in the administration of justice at the grass root thus the need for this study to fill that gap.

According to Ojambo the structure of the local council courts depends on whether the administrative area in question is rural or urban. Other than Kampala City, which has a special local government administrative structure,⁵⁹ the local government system is comprised of a five-tier structure where, in rural areas, the village council (LC1) forms the lowest level, followed by the parish council (LCII), then the sub-county council (LCIII), the county council (LCIV), and at the top (the district) the district council (LCV). On the other hand, in urban districts the structure begins with the village council (LC1), then the ward or parish council (LCII), the municipal or town division (LCIII), the municipality (LCIV) and the district council (LCV/mayor).⁶⁰ Each Local Council has a certain number of identical positions, such as Chairman, Vice-Chairman, etc. The national government appoints Resident District Commissioners (RDCs) to represent its interests at the district level.

Further according to Ojambo decentralisation was considered as a pathway for improving governance in terms of democratization and service delivery. That however accountability for public resources and service delivery remains deplorable thus the situation raising questions about the performance of decentralisation in the Country. The masses' lack of awareness and the incompetence of the local administrative staff and local politicians are some of the factors that have continued to undermine the performance of the local government system in Uganda. The claim that decentralisation promotes people's participation in the way they are governed is premised on the assumption that people understand

⁵⁷ Susan Steiner, *Decentralisation in Uganda: Exploring the Constraints for Poverty Reduction*, (2006), <https://www.files.ethz.ch/isn/47028/wp31.pdf> (Accessed on 22/5/2021).

⁵⁸ Ibid.

⁵⁹ Kampala, as the capital city, is governed under a special legislation, Kampala Capital City Authority Act of 2010 (KCCA). Though the City Council is the highest authority under KCCA, the executive functions are discharged by the Chief Executive Officer, who is appointed by the central government, while the Lord Mayor is the chief political officer and is elected, just like his counterparts in other districts, the LC5.

⁶⁰ Ojambo op.cit, p 78/569.

their roles in the decentralized programme which is not true, the government operates on the illusion that people know their roles in the decentralized system since the illiteracy level is still high. Under the said illusion, districts have been created all over the country without conducting education to empower the masses in the local governance local administration. That this inefficiency has affected service delivery and promoted corruption.⁶¹

This study does not out rightly address the efficacy of the local council courts in the administration of justice at the grass root thus the need for this study to fill that gap by this current study.

According to Nakayi, LCCs were established during the ‘Bush War’ in the 1980s by the then National Resistance Movement under the leadership of the incumbent President Yoweri Museveni, as part of the Resistance Councils system which later changed the to the LCs. The LCs, particularly the LC1s, have the potential to play a positive role in the maintenance of law and order. In this research, respondents often stated that they hold the LC1s in high regards and it is the LCCs with whom they hold the highest level of trust, believing they would respond best to their issues and needs.⁶² The 1997 Local Government Act (LGA) outlines the functions of the Administrative Units, as the LC1s and LC2s are classified. Part III, section 49, sub-sections (c), (d), (f) and (h) of the LGA pertain to the security and conflict resolution functions of the LC1s and LC2s:

Nakayi’s study was to investigate the role of Local Council Courts and Traditional Institutions in handling land disputes, using the Acholi sub-region in northern Uganda as a case study, within the time of ‘post-conflict’ chaos and an impact system of governance. It goes further examines the level of adherence by these institutions to some of the key human rights implicated by land disputes.⁶³

This existing research (Nakayi) was conducted in the Acholi land an area marred with conflicts and as such it cannot be used as a representation for other districts and areas such as Nansana Municipality, which have never experienced any political insurgencies. This research further focuses basically on customary land. The other disputes handled by the local council courts were not tackled. Further this research does not indicate the methodology used to collect the data nor does it disclose the objectives of the study or what questions were answered by the findings.

⁶¹ Ibid.

⁶² Rose Nakayi, The Role of Local Council Courts and Traditional Institutions in Resolving Land Disputes in Post-Conflict Northern Uganda, *Malawi Law Journal*, Volume 7, 2013, <https://www.researchgate.net/publication/291832821> T (accessed on 19/6/2018)

⁶³ Ibid.

Therefore to be able to evaluate the efficacy of these local council courts; reference has to be made to the all disputes, matters or causes handled by these courts within their jurisdiction. This research intends to evaluate the efficacy of the local council courts with respect to all disputes within their jurisdiction which (Nakayi) did not explore.

Jjemba on the history of LCCs states that after the overthrow of Idi Amin in 1979, the Uganda National Liberation Front (UNLF) introduced the peoples committees. The system was similar to that of the Ten House Cell System of Tanzania also termed as '*Mayumba Kumi*' in the Ugandan context. When the National Resistance Army (NRA) eventually came to power in 1986, the institution of Resistance Councils (RCs) was introduced. Resistance Councils (RCs) were a new revolutionary concept of democracy that was participatory and popular down to the grassroots. Resistance Councils (RCs) later turned into Local Councils (LCs) after the promulgation of the 1995 Constitution.⁶⁴ The overall objective of the study was to explore the experiences of local council courts in community conflict resolution. Jjemba findings revealed that the commonest cases reported in the local Council courts were led by domestic violence, rent defaulting, and land dispute and that all the key causes of the conflict were poverty; drug abuse, unemployment; infidelity, extended families, children outside marriage, rent defaulting.⁶⁵

This research was conducted in 2009 after the enactment of the Act and in Lubaga Division a Kampala suburb and not in Nansana Municipality, it is now 2018 and there have been changes in the circumstances warranting a recent study to assess performances of the LCCs with regard to their stipulated mandate.

Nsibambi argues that the Ugandan decentralization system aimed at devolving powers and functions to the local governments. Such devolved powers were categorized into: political, financial and administrative powers.⁶⁶ For instance, political powers relating to election of people's representatives who, with input from their electorates, make decisions and set policies and exercise political oversight in policy implementation. Administrative powers relate to recruitment and management of staff, while financial powers relate to collection of revenue, budgeting, accounting and reporting. The other category of powers include planning powers which involve the formulation of development plans; legislative

⁶⁴ Jjemba Harold Micheal, *Local Council Courts and Local Conflict Resolution: A Case of Lubaga Division, Kampala District, Uganda*, (2009),p. 9.

<https://researchspace.ukzn.ac.za/xmlui/handle/10413/8156> (Accessed on 19/06/2018)

⁶⁵ Ibid.,p 27.

⁶⁶ Nsibambi, Apolo. *Decentralization and Civil Society in Uganda. The quest for Good Governance*,Kampala, Fountain Publishers, 1998.

powers which involve the making of bye laws and ordinances; and lastly judicial powers which give local government mandate to exercise limited judicial functions through local council courts.⁶⁷

The other rationale for establishing decentralization in Uganda by the NRM was to provide a conduit for service delivery. The fragile nature of Uganda after the war left no available means for service delivery and as a result breaking the monopoly of central government over the social, economic and cultural life of society and allowed the local government enough room to manage the interface of social, political and cultural institutional pluralism to foster people participation and development.⁶⁸

Burki *et al.* argue that one other important rationale for establishing decentralization as a system of governance was due to the fact that it would lead to an automatic influence of all strata in the society.⁶⁹ The other basis for decentralization is rather a philosophical one. It was rooted in the belief that human beings can govern themselves in peace and dignity in the pursuit of their collective, well-being (public good) once entrusted with their own destiny through a medium of popular democratic localized institutions.⁷⁰

According to Nampewo the promulgation of the LCCA was a timely response to the fading of the LC Courts in the grass root communities. The LCCA was promulgated to provide for the establishment of LC Courts to administer justice at the local level by defining the jurisdiction, powers and procedures of the established Courts as well as provide for other related matters.⁷¹

Nampewo stated that most LC Courts are ignorant about their legal mandate including but not limited to the legal technicalities and issues surrounding collecting and collating evidence. That most court members lack the technical capacity to handle legal matters due to limited technical legal knowledge and lack of legal reference materials which limitation has resulted in these courts handling matters beyond their jurisdiction.⁷²

Nampewo's,⁷³ study is on the operation of LCCs, right from the time of their inception to the period preceding the 2006 Act, this study was conducted in the districts of Bundibugyo, Kabarole from the West, Kampala from the Central, Gulu from the North and Mbale from the East. That LCCs ensure access to justice in terms of speedy, cost, simplicity, accessibility and reconciliation. That 78% of the

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Burki, S.J., Guillema E,P. and W.R. Dillinger, *Beyond the Centre: Decentralizing the State*, Washington DC, World Bank 1999.

⁷⁰ Ibid.

⁷¹ Local Council Courts Act, 2006, Long Title

⁷² Nampewo, *op.cit*, p.18

⁷³ I bid,

persons purposively sampled agreed that LC Courts would be the first point of reference for justice and that the field findings illustrated that the percentages for local users were higher in Bundibugyo, Kabarole and Gulu compared those in Mbale and Kampala.

Nampewo further discusses that despite the existence and physical accessibility of the LCCs in the areas of Bundibugyo, Kabarole from the West, Kampala from the Central, Gulu from the North and Mbale from the East, there were challenges that marred these courts to wit; failure to adhere to principles of human rights and natural justice, ethical conduct, value of record keeping, the need for accountability and gender sensitivity, charging of exorbitant fees outside the permitted fees, lack of quorum, operational hindrances like lack of office and court space especially for LCI and II among others which when coupled together hinder the administration and access to justice at the local level.⁷⁴

Nampewo states that most LC Courts are ignorant about their legal mandate including the legal technicalities and issues surrounding the collecting and collating of evidence. That court members lack the technical capacity to handle legal matters due to limited knowledge and legal reference materials, which has resulted to these courts handling matters beyond their jurisdictions. That despite the approval and distribution of training manuals for LCCs by the Ministry of Local Government there is little emphasis on application of the Act thus leaving a lot desiring to be done, thereby affecting the quality of work of LC Courts in dispensing justice.⁷⁵

Nampewo,⁷⁶ advanced some recommendations to the above heightened challenges such as; there being civic education on the functionality of LC Courts and the structure of local governments, further that court officials must be transparent in their work and give ample information and feedback from court sessions and past meetings.

It should be noted that the research by Nampewo, is premised on the operation of the LCCs, right from the time of their inception to the period preceding the 2006 Act in the districts of Bundibugyo, Kabarole from the West, Kampala from the Central, Gulu from the North and Mbale from the East. This study does not streamline the findings for each district thus making it harder to identify performance levels of the LCCs and challenges faced by each district.

Nampewo lists a number of challenges affecting the LCCs in the administration of justice in the districts of her study but does not suggest possible recommendations for each of the challenges cited. The few recommendations advanced lack implementation / enforcement mechanisms as none were suggested thus leaving a lot desiring to be done and which can only be done/filled by this current research.

⁷⁴ Ibid.,p 14-15

⁷⁵ Ibid., p 18-20.

⁷⁶ Ibid., p38-39.

It is generally noted that local council courts are highly valued and trusted for their involvement in the community and are very accessible and affordable for all. However these courts are confronted with many challenges; that is their inability to make binding decisions, rising number of land related disputes overwhelming the understaffed and under-funded structures, lack of awareness of the provisions of the law and procedures due to absence of translated and simplified versions of the law, inadequate financial resources, and corruption among others.

The LCCA, 2006 does not stipulate any academic qualifications that executive committee members of the village or parish must have as a condition of their appointment.⁷⁷ The Act lays down other eligibility criteria such as residence in the area in which the court operates, good moral conduct, ability to speak the commonly used language in the area, and not being a member of parliament or local council.⁷⁸ Clearly, these relate to the candidate's personality and moral integrity more than to the ability of the candidate to decide land related cases. In practice, members of village executive committees are elected because of their popularity, kindness, age, compassion, family background and tribe among others, and not necessarily because of their ability and wisdom to resolve land disputes. It is important that more relevant eligibility criteria relating to competence to resolve land disputes are specified in the law, although this on its own is not enough to prevent abuse of power.

The fairer the procedures in a dispute resolution forum the greater the chances of human rights informed outcomes. This is so because fairness, a central tenet of natural justice, is intricately aligned with human rights imperatives. The procedures followed in the LCCs fall short of satisfying the requirements of fairness.⁷⁹ These inadequacies have serious implications for the fairness of the decisions handed down by these courts and present difficulties for the conduct of an appeal to the Magistrates Courts.

LCCA empowers the Minister to make rules stipulating the fees payable to this court and also deal with issues of remuneration for the office bearers. In exercising this power, the Minister has to consider the fact that these courts were designed to facilitate greater access to justice by the poor. Hence, setting excessive fees would defeat the intention the legislature had at the time of enacting this Act.⁸⁰ Pursuant to that mandate, the Local Council Court Regulations, 2007, were promulgated to prescribe the various court fees.⁸¹

⁷⁷ See sec 4(1) LCCA, 2006.

⁷⁸ Section 5, *Ibid.*

⁷⁹ Nakayi, *op.cit.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

The LC elections in Uganda were last held was in 1996, and the office bearers were legally in office until the expiration of their term in 2001. Despite the existence of legislation on the LCCs, Uganda held the LCI elections of the LCCs in July 2018 after 16 years.⁸² There are no clear reasons as to why these elections had not been held as stipulated. Further there is no literature on how these LCC were operating if at all in absence of elected leaders as some have since passed on.

The study by Barya and Onyango (1994) aimed at analyze the operation of the RC Courts and assessing their role in the administration of justice for ordinary people. The study was undertaken in the four regions of Uganda to wit; Northern, Southern, Western and Eastern regions.⁸³ That the study findings revealed that the RC Courts were a useful flora for resolution of disputes at village and local levels. The study findings further revealed that the RCs were popular and accessible to people. That the failure to follow the stipulated legal procedures was due to ignorance of the law. On the operation of the RC Courts the study findings stated that the procedures followed in the RC Courts was extremely confused and corrupt.⁸⁴

In as much as the LC Courts and RC Courts have some similar advantages and challenges. This research was carried out in 1994 on the RCs and the applicable law at the time was Resistance Councils and Committees (Judicial Powers) Statute of 1987. There have been tremendous changes in the system and structure of RC Courts to wit; the RC Courts have since been renamed into the LCCs and the applied law to RC Courts repealed to the LCCA thus the need for this research to access the efficacy of the LC Courts under the LCCA and Regulations thereunder.

None of the research/literature above attempted to critically examine the efficacy of the local council courts in Nansana Municipality, Wakiso District. The current research will be conducted in Nansana Municipality in Wakiso District to establish whether there are accessible Local Council Court, if they are performing their mandate of administering justice at the local level as mandated under the LCCA and the challenges they face together with possible recommendations. Thus this research will help in informing the policy makers and other stakeholders on what needs to be done to empower the LCCs perform their stipulated mandate of administering justice at the local level in Nansana Municipality in Wakiso district.

⁸² Online Daily Monitor of February 1 2018, op.cit.

⁸³ page 83

⁸⁴ John-Jean Barya and Oloka –Onyango (1994), *Popular Justice and Resistance Committee Courts in Uganda*, accessible at Makerere University Library,

3.0 Methodology

This study undertook to critically analyze the efficacy of LCCs in administration of justice in Nansana Municipality, Wakiso District. The Respondents' who preferred anonymity during the interviews their confidentiality was guaranteed through use of pseudo names. This was intended to ensure that respondents provide information without fear of possible retribution from relevant local council authorities.

3.1 Research Design

The researcher carried out a descriptive cross-sectional study using both quantitative and qualitative data collection methods based on randomly and purposively selected samples. Qualitative data was obtained through focused group discussions, interviews and observations. The interviews enhanced an in-depth description and analysis of the views of different stakeholders for the success of this study. Quantitative method was used to determine how many people and nature of cases that have been handled by the LCCs within their jurisdictions.

3.2 Study Population

The study population included Local Council Leaders, heads of the different divisions of Nansana Municipality both technical and political, community elders, church leaders, the police and the populaces of Nansana Municipality (who have had cases before the LCCs and those who had none before these courts); these were drawn from the four divisions of Nansana Municipality to wit; Nanasana Division, Nabweru Division, Gombe Division and Busukama Division.

3.3 Sample Size and Sampling Strategies

Due to limited resources and time constraints, sampling method was used to select the respondents of the study. Sampling is very important in qualitative research because not the whole study population can be studied. It is therefore important to pick out a portion of the population (the sample) that is representative of the entire population. Nansana Municipality is a vast area with quite a massive number of inhabitants, the research randomly and purposively targeted a sample size of 200 respondents, 50 respondents selected from each division of the Municipality. Random sampling technique was useful when gathering information from the general public (populaces) in regard to the usefulness of LCCs in the plight of delivering justice to them. Significantly, purposive sampling technique was used in this study to select the respondents who provided best perspective or opinions on the subject and also due to the limited resources in terms of finances and time.

3.4 Data Collection Methods

This research adopted both qualitative and quantitative research designs as discussed above, however the primary research design was the qualitative method. Focused Group Discussions, in depth interviews and questionnaires were employed to collect data from the respondents.

3.4.1 Focused Discussion Groups (FDGs): These were used in each division of the Municipality to gather their generalized views in a single meeting and at the same time in form of a group.

3.4.2 In depth Interviews: These are face to face encounters between the researcher and the respondents directed towards understanding their perspectives on their lives, experiences or situations as expressed in their own words⁸⁵. The largest percentage of the data was collected through in depth interviews. The Respondents were randomly and purposively selected. Random sampling technique was useful when gathering information from the general public (populaces), the purposive sampling technique was used in this study to select the respondents who provided best perspective or opinions on the subject and both methods were used to the limited resources in terms of finances and time.

The use of this method elicited in-depth information on the subject of research from the respondents. Unstructured interview guides were used to conduct the interviews and open-ended questions were asked. The interview guides were customized for each of the target groups. The answers given by the respondents were recorded verbatim. To some instances, the given answers were read back to the respondents to ascertain their accuracy.

3.4.3 Questionnaires: These were administered to the respondents in the various categories as per the study population clusters. The questionnaires were printed in the English language. However since some of the respondents were not conversant with the English language, the researcher and the research assistants interpreted the questions for them in their local languages and record the given responses for them in the English language.

3.5 Data Processing and Analysis

The qualitative data from the questionnaires was entered using Epi-data version 3.1 and transferred to SPSS software to run the descriptions and frequencies for presentations.

⁸⁵ Boyce, C. and Neale, P, *Conducting In-depth Interviews: A Guide for Designing and Conducting In-Depth Interviews for Evaluation Input* (2006), www.pathfinder.org (accessed 13th May 2018).

The qualitative data was coded and clustered along themes and sub themes for patterns and theories in aggregation with the study findings.

3.6 Ethical Consideration

Permission to carry out research was sought from; Makerere University School of Law - Higher Degrees Research and Ethics Committee, and Nansana Municipal Council. Oral consent was also sought from all individual respondents. Respondents' names were asked during data collection though were not used during data analysis, report writing and dissemination. All collected data was treated as confidential by using stratified and unique participant identifications.

3.7 Limitations of the Study

Limited time; Nansana Municipality covers a wide geographical scope with four divisions to wit; Nansana Division, Nabweru Division, Gombe Division and Busukuma Division and it took a very long time to conduct research throughout the whole municipality so as to get information from all the targeted respondents, yet the research is time constrained. Consequently, the research was conducted on a limited number of the target population in order to complete this study as scheduled.

The researcher faced a problem of limited finances during this study. Nansana Municipality is a large area with 130 villages whereby covering the entire intended respondent's involved financial logistics. The researcher mitigated this problem by limiting her research to key respondents and through random sampling.

Summary of Chapters

Chapter One

Chapter One covers the introduction, which includes the Background to the Study, Statement of the Problem, Objectives of the Study, Significance of the Study, Scope of the Study, Literature Review, Theoretical/Conceptual framework and Methodology.

Chapter Two

Chapter two presents the existing legal framework on the LCCs, the in-depth background of LLCs in Uganda, the factors responsible for promoting and hindering justice administration by the LCCs, analytically examines the effectiveness of the LCCs legal framework on administration of justice in Uganda and finally it looks at the in-depth analysis of provisions of various international instruments that addresses justice administration at local levels.

Chapter Three

Chapter Three presents a comparative study of the overview of LCCs or other forms of local justice administration systems in other countries across the globe.

Chapter Four

Chapter Four deals with both the qualitative and quantitative data analysis and presentation of the data collected from the field. This will involve tabular, graphical representations, analysis and description of the codified data on various areas of study as classified in the questionnaires.

Chapter Five

Lastly, Chapter Five presents summary of the findings, recommendations and Conclusion for effectiveness of LCCs in administering justice.

CHAPTER TWO

THE HISTORY AND LEGAL FRAMEWORK OF LOCAL COUNCIL COURTS IN UGANDA

2.1 Background of Local Council Courts in Uganda

2.1.1 Introduction

LCCs are the lowest units with administrative, legislative, and judicial powers on behalf of central governments to administer access to justice. Access to justice is a fundamental human right that encompasses availability of services, understanding legal procedures, distance to administration of justice institutions, affordability of legal services, the quality of the services being received and the fairness of the trial.

Access to Justice is a core element of the rule of law and an essential condition for the protection and promotion of all human rights. It is a state obligation to promote universal respect for, and observance of, human rights and fundamental freedom for all individuals including their economic social rights without discrimination.⁸⁶ United Nation Development Programme defines ‘access to justice’ as the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.⁸⁷

The LCCs and legal aid service provision are both aimed at enhancing access to justice for all, especially the marginalized and poor persons.⁸⁸ The background of LCCs in Uganda is linked to the history of decentralization⁸⁹ and can be traced way back to the colonial days. It after the rise of the National Resistance Movement (NRM) government to power under the leadership of Yoweri Kaguta Museveni

⁸⁶ Initiative for Social and Economic Rights, *Meaningful Access to Justice for Social and Economic Right, Uganda's Progress*, September 2019, https://www.iser-uganda.org/images/downloads/meaningful_access_to_justice_for_ESRs.pdf (Accessed on 7/6/2021)

⁸⁷ United Nations Development Programme, *Programming for Justice: Access for All, A practitioner's guide to a human rights-based approach to access to justice* (2005). UNDP works in about 170 countries and territories, helping to eradicate poverty, reduce inequalities and exclusion, and build resilience so countries can sustain progress. As the UN's development agency, UNDP plays a critical role in helping countries achieve the Sustainable Development Goals. The Sustainable Development Goals (SDGs), otherwise known as the Global Goals, are a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity.

⁸⁸ Ministry of Local Government, *Local Government Handbook 2014*, page 11, <http://www.ug.undp.org/content/dam/uganda/docs/UNDPUG2014%20LOCAL%20GOVERNMENT%20HANDBOOK%202014.pdf> (Accessed on 10/12/18).

⁸⁹ Decentralization "involves the transfer of some powers and responsibilities to lower administrative units operated by officials appointed by the central authority, who implement defined functions under tight control." See Oloka-Onyango *Decentralisation Without Human Rights?* 6-7.

that decentralization was accorded the prominence.⁹⁰ The British in their indirect rule policy of 1894 to 1962 established a hybrid system of administration in most of their colonies including Uganda, where some powers were granted to the native leaders while the colonial government reserved overriding powers through the representatives of the colonial government.

In Uganda decentralization was illustrated by the African Native Authority Ordinance of 1919, which provided for the powers and duties of African chiefs in the colonial administration. Under the Ordinance, chiefs were appointed at the village, sub-county and county levels with powers to collect taxes, preside over native courts, and maintain law and order. These chiefs were, however accountable to the District Commissioner who was the executive head of the district and the principal representative of the central government. The Local Government Ordinance of 1949 ushered in new changes by establishing the district as a local government unit with a fairly autonomous administration. Among the different organs of the district were the District Councils, which were comprised of elected members and were responsible for district administration. The central government retained overriding powers over District Council decisions. Chiefs remained salaried local government officials who were responsible to the central government through the District Commissioner.⁹¹

The 1981 – 1986 war that brought the NRM government to power greatly weakened state organs in the entire country as the rebel forces had taken control in some areas of the country which created an administrative vacuum especially in local governance, which the rebel forces (NRM rebels) addressed by appointing members of the local communities in the areas they controlled to fill the gaps in local administration. The NRM government had no spare manpower to utilize as local administrators and as such local communities were requested to elect from amongst themselves, councils to perform the duties of the defunct agents and organs of the old state. The primary role of these councils was to resist infiltration through a network of information gathering on the operations of the enemy and liaising with the NRM intelligence organs – hence the name "Resistance Councils"(RC). Resistance Councils were accordingly created with both administrative and security mandates in their areas of jurisdiction.⁹²

The Resistance Councils which were constituted with properly elected leaders who offered people an opportunity to participate in the political and other community affairs, took charge of management, development and welfare of the people in their localities. The NRM government upon coming into power embarked on improving and legally entrenching the resistance council system of administration for the reasons of democratic governance, filling the gaps in administration created by the destruction

⁹⁰ Ojambo, op.cit, p. 72-76.

⁹¹ Ibid.

⁹² Ibid.

of state organs during the war and by 1987 the Resistance Council's and Committees Statute (the RC Statute) was enacted repealing part 1 of the Local Administration Act of 1967 and the Urban Authorities Act of 1964 which created a uniform set of regulations that gave the Central Government control over local administration in each district. The enactment of the RC Statute marked the formal decentralization process under the Movement government by transferring such powers as planning, decision making and the administration of justice to the community-based Resistance Council system.⁹³

In 1993 the Local Government (Resistance Councils) Statue was passed firmly providing a legal basis for Resistance Councils in the country. In 1995 after a nation-wide consultations a new National Constitution was promulgated providing a clear constitutional base for decentralized governance in the country under Chapter 11, the Local government Act of 1997 was also enacted cementing devolution. The RC system was further institutionalized when the 1995 constitution re-named RC, LCs giving this system of governance a legal backing as evidenced.⁹⁴

The Decentralization policy provided for democratically elected LCs at all levels in the country. LCs were established right from the village to the district through elections by universal adult suffrage. Decentralization facilitated greater access to justice, through the LCCs. Courts were established from the village, parish to sub-county level comprising members of the council. A Constitutional amendment changed the term of office for councils from 4 to 5 years since 2006.⁹⁵

The Local Governments Act empowered the Local Governments to establish their own staffing structures and the powers to appoint, discipline and promote staff under them are exclusively vested in the District Service Commissions which are appointed by the Local Governments themselves. Under the Local Governments Act, LCs are empowered to make laws ordinances at Districts and bye-laws at Lower LCs, for areas of their jurisdiction as long as they are not inconsistent with the Constitution or any other law and have powers to make development plans based on locally determined priorities.⁹⁶

At Sub-County/Town/Division Councils there is also a Local Council Court. A remarkable achievement is that LCs at village and parish levels also function as local courts. The LCCs are popular and successful in providing an alternative mode of dispute resolution. They are seen as easily accessible because they operate at village level, and their proceedings are conducted in languages, which the people understand

⁹³ Ibid.

⁹⁴ Kauzya, op.cit.

⁹⁵ Local Government Handbook 2014, op.cit,p 11.

⁹⁶ Ibid.

well without the technicalities of formal courts. The LCCs have promoted the rule of law because they handle cases expeditiously, fairly and cheaply.⁹⁷

The Resistance Committees (Judicial Powers) Statute gave the Resistance Councils judicial powers and established them as Courts. In the bid to further institutionalize the local governance, the Executive Committees (Judicial Powers) Act, Cap 8 which initially provided for the LCCs was repealed by the Local Council Courts Act, 2006 under Section 50 of the Act. The Local Council Courts Act, 2006 establishes Local Council Courts for the administration of justice at the local level, defines the jurisdiction, powers and procedures of the established courts and for other related matters. There are three levels of the Courts; LCC III at the sub county/Town/Division Council (level 3); LCC II at the parish/ward (level 2) and LCC I at the village. The LCCs being part of the elaborate court system are to exercise judicial power in Uganda in the name of the people and in conformity with the values, norms and aspirations of the people and the 1995 Constitution of Republic of Uganda.⁹⁸

2.2 The Legal Framework on Local Council Courts in Uganda

The RC Statute marked the very beginning of the formal decentralization process under the Movement government by transferring such powers as planning, decision making and the administration of justice to the community-based Resistance Council system.⁹⁹ Further in the bid to ensure that justice is brought closer to the people, the RC Statute was repealed and others laws were put in place.

On the legal framework of the LCCs, the Respondents had this to say;

“.....These LCCs are established under the 1995 Constitution of Republic of Uganda, Local Government Act and the Local Council Courts Act among others, it’s under laws that they derive their mandate.....”¹⁰⁰

The Chairperson LCI Ttula stated that;

“.....these courts are regulated by the law, for example the Local Council Courts Act which provides for their composition and jurisdiction.....”¹⁰¹

⁹⁷ Ibid.

⁹⁸ Article 126 (2).

⁹⁹ Ojambo op.citp. 72-76.

¹⁰⁰ Mr. Kavuma Musa, Assistant Town Clerk, Gombe Division (Secretary to the LCCIII) in an interview conducted on 30th August 2019.

¹⁰¹ Mr. Senkima Joseph, Chairperson LC1 Ttula, Nabweru Division) in an interview conducted on 29th August 20.

2.2.1 The Constitution of the Republic of Uganda, 1995 as Amended

The foundational structure of the local governance system is laid down in Chapter eleven of the Constitution of Uganda 1995.

The 1995 Constitution is the supreme law of the land as per Article 2(1) which provides that, this Constitution is the supreme law of Uganda, and shall have binding force on all authorities and persons throughout Uganda. It also provides under article 2 (2) that if any other law or custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail and any other law shall to the extent of the inconsistency, be void.

The study findings revealed that all the LCCs committee members considered the 1995 Constitution of Republic of Uganda as the Supreme land of that regulated and governed the LCCs.

The 1995 Constitution stipulates that the State shall take all necessary steps to involve the people in the formulation and implementation of development plans and programs which affect them.¹⁰² To realize this objective the state is to be guided by the principles of decentralization. In furtherance of this objective, Objective II (1) *obliges* the state to employ and promote democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance.

According to Article 126 (1) of the 1995 Constitution of the Republic of Uganda, judicial power is derived from the people and shall be exercised by the courts established under the Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people. In adjudicating cases of both a civil and criminal nature, the courts are required to apply the following principles (subject to the law) – justice shall be done to all irrespective of their social and economic status; justice shall not be delayed; adequate compensation shall be awarded to victims of wrongs; reconciliation between parties shall be promoted; and substantial justice shall be administered without undue regards to technicalities.¹⁰³

Under Article 127 of the 1995 Constitution of the Republic of Uganda, Parliament is empowered to make laws providing for participation of the people in the administration of justice by the courts. In compliance with this Article the Local Government Act Cap 243 was enacted to amend, consolidate and streamline the existing law on local governments in line with the Constitution to give effect to the

¹⁰² Objective X of the National Objective and Directive Principles.

¹⁰³ The 1995 Constitution, Article 126(2).

decentralization and devolution of functions, powers and services; to provide for decentralisation at all levels of local governments to ensure good governance and democratic participation in, and control of, decision making by the people; to provide for revenue and the political and administrative setup of local governments; and to provide for election of LCs and for any other matters connected to the above.¹⁰⁴ The LCCs satisfy this function of involvement and participation of the people in decision-making processes.

The 1995 Constitution stipulates that a local government shall be based on a council which shall be the highest political authority within its area of jurisdiction and which shall have legislative and executive powers to be exercised in accordance with this Constitution.¹⁰⁵

The findings of the study revealed that the people of the various villages I Nansana Municipality were given a chance to elected to elect their leaders who also double as court official through the adult suffrage “..... on the day of elections we voted our LC1 leaders through lining up and before the counting could begin, we already knew the winners”¹⁰⁶

2.2.2 The Local Government Act, Cap 243

The Local Government reform process that began in 1992, culminating into the Local Government Act, 1997, which led to the local government system in its present form with five different levels of local government. The rationale behind the reform of local government was to provide for a more effective form of local governance, especially in the realm of service delivery.¹⁰⁷ The 1997 Local Government Act (LGA) also made local government officials more accountable to the general public through regular elections for local council positions.

The Local Governments Act has been amended several times to wit, in July 1997 to provide for the establishment and composition of interim LCs for newly created local government units. Secondly, in June 2001 to give more effect to the decentralization of powers and ensure the smooth implementation

¹⁰⁴ Long Title of the Local Government Act, Cap 243.

¹⁰⁵ Article 180 (1).

¹⁰⁶ Mr. Mpanga, a resident of Ttula village (LC1) Nabweru Division in an interview conducted on the 29th August 2019.

¹⁰⁷ The process of reforming the local government system has been described as being a personal commitment of President Museveni. (Robinson, 2006). That the reforms were so closely tied to the personal commitment of the President is both a strength and weakness of the system. The President’s commitment meant that reforms would be passed. At the same time, should continuing to strengthen local government no longer fit into his personal political agenda it would be possible to reverse course and recentralize powers that had been devolved to the local level. The manipulation of the G-Tax, which was a significant revenue generator for local governments, illustrates how national level political maneuvering has interfered in the autonomy of local governments (Bahigwa, 2004).

of the decentralization policy. Thirdly, in November 2001 to amend specific sections concerning holding two political offices, nomination and approval of the village and parish executive committees, quorum at parish and county elections, and the time for holding local council elections. Fourthly, in November 2003 to make substantive provisions relating to the establishment and functions of the Local Government Finance Commission and consequentially repeal sections of the Act that are now replaced by the Local Government Finance Commission Act, 2003. The amendment of 2001 was made to give more effect to decentralization and ensure the smooth implementation of the policy. The other amendments have essentially been modifications of provisions relating to the establishment, composition and election of LCs – aimed at facilitating more active participation by the people in LCs. By way of illustration, voting at local council elections, except at the county, is now by secret ballot, instead of lining behind the candidate as initially provided for under the Act.¹⁰⁸ The 2015 amendment was to provide for the procedure of elections for administrative unit councils and committees; to harmonise and reconcile the provisions relating to public finance with the reforms made in public finance; and to provide for related matters.¹⁰⁹

The 2020 amendment was to amend the Local Governments Act, Cap.243 to provide for the creation of local governments and administrative units at least six months before the due date for the next general parliamentary and local government council elections to provide for the demarcation of electoral areas; to prescribe the manner of conducting campaigns; to bar persons not ordinarily resident in a local government area from contesting for councilor for that areal to prescribe the time within which to fill vacant positions in a local government council; to provide for the procedure for commencement of polls at each polling station and to align the Local Governments Act with the provisions of the Constitution as amended by the Constitution (Amendment) Act, 2018.¹¹⁰

During the parliamentary session of March 4, 2020 some members opposed the inclusions of education qualification in the Local Governments (Amendment) Bill, 2019 citing that UPE and USE had just been introduced in some areas like Karamajong.

Under the Local Government Act, it is stipulated that a council shall be the highest political authority within the area of jurisdiction of a local government and shall have legislative and executive powers to be exercised in accordance with the Constitution and this Act.¹¹¹ The Act further provides that there shall be administrative units base in rural areas to wit; the county, the parish; and the village; and in

¹⁰⁸ Uganda's Decentralisation Policy, Legal Framework, Local Government Structure and Service Delivery <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN029080.pdf> (Accessed on 20/8/2019).

¹⁰⁹ Long title, The Local Governments (Amendment) Act, 2015.

¹¹⁰ Long title, The Local Governments (Amendment) Act, 2020.

¹¹¹ Section 9 (2).

urban areas to wit; the parish or ward; and the village.¹¹² These administrative units under Section 48 are charged with at the county and parish level to resolve problems or disputes referred to it by relevant sub county or village councils; to resolve problems identified at that level; to monitor the delivery of services within its area of jurisdiction; and to assist in the maintenance of law, order and security among others.¹¹³

A district council shall have powers to make laws not inconsistent with the Constitution or any other law made by Parliament which power shall be exercised by the passing of local bills into ordinances by the council and signed by the chairperson.¹¹⁴ Further an urban, sub-county, division or village council may, in relation to its powers and functions make byelaws not inconsistent with the Constitution, or any law enacted by Parliament, or an ordinance of the district council or a byelaw passed by a higher council.¹¹⁵ The powers of the LCs to make laws are subject to limitations to wit; 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.¹¹⁶

The Local Government Act, Cap 243 outlines the functions of the Administrative Units, as the LC1s and LC2s are classified. Part III, *section 49, sub-sections (c), (d), (f) and (h)* of the LGA pertain to the security and conflict resolution functions of the LC1s and LC2s. *Section 49(d)* states that one of the functions of the Administrative Council Units is “to resolve problems identified at that level, while sub-section (f) provides for Administrative Council Units “to assist in the maintenance of law, order and security.”¹¹⁷ But further description as to the exact type of assistance that is supposed to be given by this level of the local government is not specified in the LGA.

The Act¹¹⁸ classifies the administrative Units of local government as; in rural areas; (i) the county; (ii) the parish; and (iii) the village and (b) in urban areas (i) the parish or ward; and (ii) the village; with a council at each level of the administrative units. The legal jurisdiction of the LCCs and the types of cases that the courts at this level are permitted to handle is laid out in the Second and Third Schedule of the Act.¹¹⁹

¹¹² Section 45 (1).

¹¹³ Local Government Act, Capp 243.

¹¹⁴ Ibid, section 38 (1).

¹¹⁵ Ibid, Section 39(1).

¹¹⁶ ibid, Section 44.

¹¹⁷ The 1997 Local Government Act.

¹¹⁸ Ibid, Section 45.

¹¹⁹ Ibid.

2.2.3 The Local Council Courts Act, 2006

The government of Uganda, with the intent to provide a more effective and organized form of local governance, especially in the realm of service delivery and on realizing that community conflicts could not be handled entirely by the central government, enacted a Local Council Courts Act 2006.

The Parliament of Uganda in discussing the Local Council Courts Bill on April 18, 2006, it was discussed that the bill attempted to bring justice to the people by introducing these courts, which will operate at the very grass root level and that the most important objectives for the establishment of LCCs was to bring justice to the door-step of the people and also to provide for the participation of the people in the administration of justice by the courts as required by Article 127 of the Constitution.¹²⁰,

Prof Kabwegyere, Minister of Local Government and the Chairperson of the Committee on Public Service and Local Government (then) further observed that:

“.....Therefore, this Bill in bringing the concept of courts lower down to the LC I is meant to ensure that people participate in solving conflicts at the very grass root level where most conflicts actually take place. They may not be of high intensity, but certainly they are of high quantity. There is a lot of dispute, there are conflicts at the grass root level, which if were to be handled by the bigger courts, there would be many problems. Justice would be miscarried. We all know that the language of the formal courts can be very esoteric and very strange. The very appearance of judges in their gowns and wigs can frighten ordinary peasants. But in this case, we are talking of a system, which would depend on the people who are known widely by the people in the villages where they all live. Probably, the court and court judges at this local level will be the uncles, will be the sisters and will be the brothers of the same people who live together. The courts are called local council courts as separate from the Local Council Executive Committees at the town, division and sub-county level as will be seen in clause 4(2). This would enable separation of the executive and the judiciary empowers the Executive Committee to enable the impartial handling of appeals from lower courts without any political influence. This should be emphasized that sometimes it is taken that in politics, people do not judge others fairly and since this might be the case, we in the Bill try to separate the political roles from the judicial roles as you go higher up from the lower levels where we think justice is more understood and less political than if you are higher up....”¹²¹,

¹²⁰ Parliamentary Hansard of April 18, 2006 page 16.

<https://www.parliament.go.ug/documents/124/hansards-2006> (Accessed on 12/6/2021).

¹²¹ Parliamentary Hansard of April 18, 2006 page 16.

Further Ms. Lydia Balemenzi, Chairperson, Sessional Committee on Public Service and Local Government on the Local Courts stated that the Local Council Courts Bill, was developed in order to address the weaknesses in the existing law, the Executive Committees (Judicial Powers) Act (Cap 8) and to promote the dispensation of local justice. That the Objectives of the Bill among others were that the Bill sought to introduce reforms in LCCs justice system currently provided for under the Executive Committees (Judicial Powers) Act thereby strengthening it, to introduce a participatory justice system at the local level, to establish standards upon which the operations of the LCCs will be streamlined and to repeal the Executive Committees (Judicial Powers) Act and at the same time saving pending cases before LCCs.¹²²

During the said parliamentary session, it was further observed that the LCCs were basically entertain light civil matters that arise out of daily activities in their areas of jurisdiction and matters arising out of infringement of bye-laws duly made under the Local Governments Act, 1997 and that the functions of the LCCs among others were to: adjudicate civil cases; interpret bye-laws in tandem with the Constitution and Acts; promote human rights, social justice and morality. That the Chief Magistrates Courts have general powers of supervision over all LCCs within the areas of their jurisdiction.¹²³

The LCCA, 2006 whose operationalization began on 8th June, 2006 established the LCCs for the administration of justice at the local levels; it defined the jurisdictional powers and procedures for the established Courts and other related matters. The Minister of local government issued the Local Councils Courts (Regulations) 2007 aimed at facilitating the operationalization of the Local councils in their functions related to the administration of Justice. Since their inception, the experiences, challenges, and people's perception of these local councils is not very clear. The intention of the legislator, as can be deduced from that Act, is that LCCs should operate at village, parish, town, division and sub-county levels.¹²⁴

The LCC Act provides for establishment of a local council court at every village, parish, town, division and sub-county level.¹²⁵ The local council court of a village or parish shall consist of all members of the executive committee of the village or parish. The local council court of a town, division or sub-county

¹²² Ibid., page 17.

¹²³ Ibid., page 18 and 19.

¹²⁴ Members of the village or parish executive committee constitute the village or parish LCC. See sec 4(1) of the Local Council Act No 2006 of 2006. Persons that serve in the town, division or sub-county LCC are appointed by local councils at those respective levels, and the requirement is that at least two members must be women (sec 4(2) and (3) Local Council Act).

¹²⁵ Section 3.

shall consist of five members appointed by the town council, division council or sub-county council on the recommendation of the respective executive committee and at least two members of the town, division or sub-county local council court shall be women.¹²⁶ A town, division, sub-county, local council court shall elect a Chairperson and a Vice-Chairperson from among themselves and the Vice-Chairperson shall be a woman if the Chairperson is a man and vice versa if the Chairperson is a woman.¹²⁷

Since the inception of the LCC Act in 2006, the aforementioned structure has been on the ground operating. In the case of *Rabaramira Ruranga vs. Electoral Commission and another, Constitutional Petition No. 21 of 2006*¹²⁸; This petition was instituted to challenge the constitutionality of certain provisions of the Local Governments Act, among others the petitioner sought declarations declaration that various provision of the Local Government Act such as section 160, 161 (4) and 161 (2), all about nomination and voting of candidates for election to county parish or village council, and Regulation 14 (1), (3) of Statutory Instrument 319-1 contravened Article 61 (1) (a) of the Constitution that required the Electoral Commission to conduct free and fair elections. The petitioner among others sought orders that the impugned provisions stipulated oral nomination of candidates who would be seconded by a member, the parish chief was designated as the presiding officer for elections taking place at the village or parish level. The non-involvement of the Electoral Commission in the process was considered a breach of the constitution Article 61 (1) (a). On the whole, the court found those provisions in contravention of the Constitution and made a declaration to that effect.

The implication of this decision is that officers who were appointed in accordance with the impugned provisions do not validly hold office. This decision was passed in 2007, but up- to July 2018, the LCs I and II had not any elections; offices were occupied by the old people who ran the affairs of the councils and the courts at those levels.

*“.....Our Courts of LC1 and LCII have been operating from the time I came to Ttula in 2006 up-to date and have been resolving disputes between the people.....I know this because I was a witness in a case in the LCII Court in 2009”*¹²⁹

The Study findings revealed that from 2001 to July 2018 in case of a vacancy on the LC Executive Committee, the Committee members called villages meetings in which new replacements were elected.

¹²⁶ Section 4 of the Local Council Courts Act 2006.

¹²⁷ Section 6(1) and (2).

¹²⁸ <https://ulii.org/ug/judgment/constitutional-court-uganda/2007/3> (Accessed on 12/6/2021).

¹²⁹ Mr. Mpanga, a resident of Ttula village (LC1) Nabweru Division in an interview conducted on the 29th August 2019.

Further the study findings revealed that the judgments and orders of the LC1 and LCII Courts delivered between 2001 and 2018 before the election of the LCCs official in July 2018 were declared a nullity and retrials ordered in courts of competent jurisdiction.

In the case of *Ocitti v. Okello*, *Miscellaneous Application No. 054 of 2014* seeking for revision of the order of the Chief Magistrate's ruling in Misc. Application No. 182/2010 and the LC II Court Judgment of LC II of Amar Local Council II Court of Koch Goma Sub county Nwoya District , the court observed that the proceedings in the Local Council II court all took place on 1/5/2010, and there was no evidence that the applicant was summoned to appear in court; contrary to rules of natural justice. The court found this to be a procedural impropriety. The Court echoed the decision in the *Rubaramira Ruranga* case above and held that the Local Council I and II courts were not constitutionally and legally constituted since they were declared unconstitutional in the above case and that the proceedings before the LCII were a nullity.

The Local Council Courts Act provides further that for any person to be appointed a member of a town, division, or sub-county local council court, that person shall; be a resident of the area of jurisdiction of the council for which the court is appointed; be a person of high moral character and proven integrity; be knowledgeable in the common local language of the community in question and in English; not be a member of a local council, a member of Parliament or a member of a statutory body and not be a member of another local council court The Local Government Act Cap 243 section 111 (3) provides that; a person shall not qualify for election as Chairperson of district or city unless that person has completed a minimum education of Advanced Level standard or its equivalent.

Although during the parliamentary session of 19 April 2006¹³⁰ there was a heated discussion on the academic qualifications of the lower LC official, Section 5 ¹³¹ of the LCCs Act does not stipulate any academic qualifications that executive committee members of the village or parish must have as a condition of their appointment.

Under the Guidelines for election of Village and Parish/Ward administrative unit chairpersons, nomination and approval of Executive Committee Members 2017 issued by Justice Byabakama Mugenyi Simon, Chairperson, Electoral Commission, it is clearly stated that no academic qualifications

¹³⁰ Parliamentary Hansard of April 19, 2006 page 34 (Accessed on 12/6/2021).

¹³¹ Local Council Courts Act, 2006.

shall be required for election of village chairperson and that village executive committee members shall be nominated by the elected chairperson from among members of the village council present and presented to the village council for approval one by one by show of hands.¹³²

The president of Republic of Uganda in June 2020 refused to ascent to the Local Government (Amendment) Bill, 2019 which sought to introduce academic qualifications for lower LC officials citing that, it was discriminatory and that the same be reconsidered before he assented to the Bill.¹³³

The Act only stipulates other eligibility criteria such as residence in the area in which the court operates, good moral conduct, ability to speak the commonly used language in the area, and not being a member of parliament or local council. These relate to the candidate's personality and moral integrity more than to the ability of the candidate to decide on cases. In practice, members of village executive committees are elected because of their popularity, kindness, age, compassion, family background and tribe among others, and not necessarily because of their ability and wisdom to resolve disputes.

This poses a problem to the LCC operation as they will be run by lay people not knowledgeable of the law and thus likely to blunder. Case in point is *Juliet Nabirige V William Waibi Makooma Mukembo Nanvesi* Civil Appeal 20/ 1989, it was held inter alia that the chief magistrate that the records for the RCIII court "left a lot to be desired" and therefore, the chief magistrate could not come to a just decision and thus ordered a retrial. As a matter of fact the chief magistrate was not happy with RC lay people handling legal disputes as courts

Under the Act, a Local Council Court may be held at a designated place within the limits of its jurisdiction for the convenient and speedy discharge of its business and every sitting shall be presided over by the Chairperson of the court and in the absence of the Chairperson, the Vice-Chairperson shall preside. The Local Council Court shall sit as often as the business of the court requires for the speedy discharge of cases.¹³⁴ The quorum of the court at any sitting shall in the case of a village or parish be 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 in absence of the quorum for any reason, the court shall adjourn to another time as quorum shall be maintained in all sittings.¹³⁵

¹³² Guideline 9 (c) and 16.0.

¹³³ The Independent , Online of July 16,2020 , <https://www.independent.co.ug/parliamentary-committee-divided-on-returned-local-government-bill/> accessed on (22/5/2021).

¹³⁴ Section 8 (1) (2) and (3) Local Council Courts Act, 2006.

¹³⁵ Section 8 (4) I bid.

The LCI and LCII Court judgments held in absence of quorum and jurisdiction have been set aside by the formal Courts. In the case of *Kintu Tom Versus Nsubuga Arajabu HC Civil Revision No. 014 of 2016 (Arising from Kamuli Namwenda LCII Court Judgment Dated 23/09/2012)*, Lady Justice Eva K. Luswata observed that;

“...According to the proceedings of 23/9/12, a total of six men sat to hear and decide the dispute. The judgment was signed by the Chairperson LCII. There was no female representative and thus the Court had no quorum. The proceedings would thus be irregular and the decision illegal for lack of quorum. Although the proceedings for the LCI Court were not attached for scrutiny of this objection, I have already made the decision that the LCI Court had no jurisdiction to hear the dispute as the Court of first instance...”

Under the 1995 Constitution of Republic of Uganda,¹³⁶ it is stipulated that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law. Further the Constitution provides that a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.¹³⁷

However, the LCCs Act 2006 gives prominence to gender concerns especially female representation at the local level to wit; requiring a chairperson to a town, division and sub-county local council court to be a woman if the chairman is a man and vice versa. In as much as it is a noble innovation it is contrary to the above provisions to the Constitution.

A Local Council Court shall sit for the hearing of cases during the hours of daylight and the court may, if it considers it necessary at any stage of the trial of a case including domestic relations, order that the public generally or any particular person shall not have access to or be or remain in the room, building or place used by the court. The LCCs Act provides that a Local Council Court shall sit and hear cases during the hours of the day light.¹³⁸ The Regulations specify that the time for sitting shall be from 8am to 6pm.¹³⁹

It should be noted that most people who use these courts are peasants who have to tend to their gardens and crops during the stipulated time for sittings and in cases where children are involved during the

¹³⁶ Article 21(1).

¹³⁷ Article 21(2) 1995 Constitution of Republic of Uganda.

¹³⁸ Section 36 (1).

¹³⁹ Regulation 41 (1) (e).

stipulated time they attending to school all these have hindered physical accessibility to these LCCs. To enhance access to justice these courts should stipulated to sit on weekends.

The Local Council Court has both territorial and legal jurisdictions. The Act provides that subject to the provisions of the Act and any other written law, the jurisdiction of a local council court shall 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.¹⁴⁰ With regard to the legal jurisdiction the Act further provides that 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; (a) causes and matters of a civil nature specified in the Second Schedule to this Act; (b) causes and matters of a civil nature governed only by customary law specified in the Third Schedule; (c) causes and matters arising out of infringement of bye-laws and Ordinances duly made under the Local Governments Act; (d) matters specified under the Children Act and (e) matters relating to land.¹⁴¹

The Local Council Court shall exercise its jurisdiction subject to limitations. The Act provides that in any suit relating to causes and matters specified in the Second and Third Schedules; (a) the jurisdiction of the local council court 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; (b) 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.¹⁴² The Act further under Section 10 (3) provides that 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 and 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.¹⁴³

The Local Council Courts Act provides that all suits 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) the defendant actually resides at the time of the commencement of the suit; or (b) where the cause of action in whole or in part arises; or (c) in the case of a dispute over immovable property, where the property is situated and every suit shall be received by the Chairperson and in the absence of the Chairperson, by the Vice-Chairperson.¹⁴⁴

¹⁴⁰ Ibid Section 9.

¹⁴¹ Ibid Section 10 (1).

¹⁴² Section 10 (2) of the Local Council Courts Act, 2006.

¹⁴³ The Local Council Courts Act, 2006.

¹⁴⁴ Section 11(1) and (2).

There are numerous authorities on the jurisdiction on the LCC1 as a court of first instance in handling customary land disputes. In the 5 Civil Revisions of *Mutonyi Margret Wakyala Versus Tito Wakyala HC-04-CV-CR-0007-2011*, *Betty Makutusi Versus Waswa Hassan HCT-04-CV-CR-0008-2011*, *Margret Nambuya Versus Kaboole Stephen HCT-04-CV-CR-0009-2011*, *Shaban Wangolo Versus John Emmanuel Masaya HCT-04-CV-CR-0010-2011*, *Wakapiri Charles Versus Masinde Richard HCT-04-CV-CR-0012-2011*, Justice Musota Stephen citing the case of *Uganda Revenue Authority v. Uganda Electricity Board HCT-CA-001-2006* where it was held that it was trite law that where an earlier statute is in conflict with a later one, the later statute prevails. This is a conclusion based on the assumption that the Legislature keeps abreast with the needs of the time and is wiser as time passes; observed that;

“.....observed that the Land (Amendment) Act No.1 of 2004 did allow the LC.II Court to handle matters concerning land disputes as a court of first instance removing jurisdiction from the LC.I Court. However by virtue of S.11 of the LCCA No.13 of 2006 this matter was revisited by the Legislature and as of now jurisdiction was restored to the LC.I Court. Suits have to be commenced in the LC.I court as a court of first instance. While there is no express repeal of the powers of the LC.II Courts under the Land Act in the LCCA, there is implicit or implied repeal thereof rendering the powers of LC.II Courts stale which cannot be enforced by any court of law... Therefore the LCCA which is a later statute repealed S.76A of the Land Act by implication thus removing powers from the LC.II Courts acting as court of first instance in land matters. It also completely reformed the appeal process in land matters as provided for under S.32 of the LCCA. Consequently I will hold that the LC.II Courts no longer have jurisdiction in land matters as courts of first instance. All the affected decisions by the LC.III Courts in the above cases are null and void and are set aside. Retrials will be conducted in accordance with the law and if parties so wish....”

In the case of *Nyakiyumbu Growers Cooperative Society Ltd Vs Tembo K. Salongo*, HC Revision Cause No. 01 of 2017 (Arising from KAS-OO-CV-MA-01 OF 2017), Justice Oyuko. Anthony Ojok observed that;

“....the alleged judgment being relied upon by the Respondent was passed by the Local Council one (LC I) Court of Rwehingo Village, Nyakatonzi Parish, Mukunyu Sub-County in 2005. According to the alleged Judgment, it clearly indicates that the case was lodged in the LC I Court on 15th day of June 2005 and Judgment was delivered on the 21/7/2005. basing on Section 76A of the Land Amendment Act No. 1 of 2004 which was amended by section 30 of the Land (Amendment) Act 2004, the said LC I Court had no powers to handle Land Matters/cases. That the said LC I Court had no powers to entertain land matter/cases and the same should be nullified...”

Section 76A of the Land Act (introduced by section 30 of The Land (Amendment) Act, 2004) divested L.C. I Courts of primary jurisdiction over disputes in land, providing instead that “the Parish or Ward Executive Committee Courts shall be the courts of first instance in respect of land disputes. The impact of that amendment was considered in the case of *Busingye Jamia v. Mwebaze Abdu and another*, H. C. Civil Revision No. 33 of 2011, which was cited with approval by the Court of Appeal in the case of *Nalongo Burashe v. Kekitiibwa*, C. A. Civil Appeal No. 89 of 2011 where Justice Bashaija J in the case observed that;-

“It is my view that provisions of the Land Act were intended to modify the provisions of the Executive Committee (Judicial Powers) Act (supra) with regard to jurisdiction over land disputes and the forum of appeals from Division or Sub-County Executive Committee Courts.

The Local Council Courts Act has by, it's Section 10 (1) (b) regarding "legal jurisdiction", and Section 32 (2) (c) regarding the right of appeal, re-enacted with slight modification the provisions which were contained in Section S (1) (b) on jurisdiction, and Section 28 (2) (c) on appeals, in the Executive Committees (Judicial Powers) Act (Cap 8), now repealed. Therefore, according to Section 13 (1) of the Interpretation Act (supra) on "effect of repeal", references by Land Act, Section 76 A (1) and (2) to the provisions so repealed have to be construed as references to the provisions so re-enacted, that is; Section 10 (1) (b) and Section 32 (2) (c) of Local Council Courts Act).

*I am acutely aware of the principles of construction which require that an earlier Act stands impliedly repealed by a later Act. See *Kariapper vs. Wijesinlta* [1968J AC 716, which was the provisions, of Section 76 A (1) and (2) of the Land Act (Cap 277), because the provisions contained in Sections 10 and 32 (supra) are expressed to be subject to the provisions of any other written law. Accordingly, a Local Council Court established at the village level has no jurisdiction to try and determine land dispute or matters relating to land. Section 76 A (1) and (2) of the Land Act (Cap.227) have to be read with all the necessary modifications and/or adoptions in light of changes in names of courts established under the Local Council Courts Act, (2006) have followed by the Court of Appeal of Uganda in Civil Appeal No. 12 of 1985 between *David Ssejaaka Nalima and Rebecca Musoke*, per Odoki, JA. (as he then was). In that case, the Learned Justices of Appeal agreed with the forestated statement of the principles of construction of statutes. I am of the strong view, however, that situation in the instant case is properly covered by Section 13 (1) of the Interpretation Act (Cap 3). This is so because the general principles of construction of statutes would not apply where the local interpretation Act provides for a specific situation. I will conclude the above point by stating that Section 10 (1) (b) and (e) and Section 32 (2) (c) of the Local Council Courts' Act (2006) have to be construed subject to the provisions of Section 76 A (1) and (2) of the Land Act (Cap 277), because the*

provisions contained in Sections 10 and 32 (supra) are expressed to be subject to the provisions of any other written law.

Accordingly, a Local Council Court established at the village level has no jurisdiction to try and determine land dispute matters relating to land. Section 76 A (1) and (2) of the Land Act (Cap.227) have to be read with all the necessary modifications and/or adoptions in light of changes in names of courts established under the Local Council Courts Act, 2006..”

However, it is worth noting that on 1/12/2006, the Hon. The Chief Justice issued a Practice Direction No. 1/2006 (published on 1/12/2006) directing Magistrates Courts presided over by Magistrate Grade One and above to exercise jurisdiction over land matters in accordance with Section 95 (7) of the Land Act. This Practice Direction came into force almost six months after the Local Council Courts Act, 2006 had commenced operation on 8/06/2006. There was no mention of LCCs handling land matters in the Practice Direction. Be that as it may, one thing that is clear is that the Land Act (Cap 227) is a special Act dealing with the jurisdiction of courts below the High Court, over land matters. While the Local Council Act maybe a later legislation, its provisions which are inconsistent with Section 76 A (1) and (1) of the Land Act must be read and applied subject to the provisions of the Land Act.

The LCCs without prejudice to other powers and subject to Part IX of the Act are also clothed with the jurisdiction to make an order for any one or more of the following reliefs; 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.¹⁴⁵

Under Section 21 (1) and (3) the proceedings of the LCC 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 and notwithstanding subsection (1), the record of proceedings in a town, division or sub-county local council court shall be in English.¹⁴⁶

The research findings revealed that the chairperson or Vice Chairperson upon receiving a case, the same was recorded in the format provided for under the law. The findings revealed that not only are court officials unable to keep good accountability of the finances in their control but also records of the court proceedings.

¹⁴⁵ Section 13 of the Local Council Courts Act, 2006.

¹⁴⁶ The Local Council Courts Act 2006.

In the case of *Sebastiano Magaya V Sematiya Nsaja Civil Appeal No .43/1989* in reviewing the case file, the chief magistrate observed that,

“.....I have carefully perused the RC III proceedings and I must attest that a worst piece of work I have never handled. The records do not show if any of the witnesses was sworn. You get sentences marked Q and A presume big meaning question and answer. As to who is asking the question and answering them is often unclear. The witnesses are not numbered and you have to exercise great care that you do not take the evidence of one side's witness for the other....”

An LC Court under Section 24 is mandated in exercising its jurisdiction to be guided by the principle of impartiality without fear or favour and to adhere to the rules of natural justice, and in particular shall ensure, that each party is given an opportunity to be heard, that each party is given notice of the proceedings and of the case against him or her, that each party is accorded ample opportunity to call witnesses and to adduce such evidence as he or she requires to support his or her case; and that any member of the local council court who directly or indirectly has an interest of whatever nature, in the issue in dispute is disqualified from hearing the case.¹⁴⁷ The LC Court shall hear every case before it, expeditiously and without undue regard to technical rules of evidence or procedure.¹⁴⁸

The research findings on the institution of suits revealed that suits are instituted in such a way that it is the chairperson to receive the suits and in his absentia the vice chairperson or General Secretary. This procedure is widely followed as any member of the public who has a dispute with other members in the community is required to report the matter the aforementioned persons. Further the research findings revealed that witnesses are required to attend court when called upon to do so, if they do not have sufficient excuse for non-attendance so as to give court evidence on an issue matter at hand courts are adjourned the matters and in some instances proceeded without those witnesses.

The LCCs are basically non formal courts and as such apply rules of natural justice and one of the cardinal principles of natural justice is that there should not be bias as one dispenses his or her activities. For stance according to the Revised guidelines of 2007 it is stated that as the local council officials do their work they should be careful not to ask biased questions, give the defendant a chance to state his or her case and many other ways that portray fairness.

A party dissatisfied with the judgment or order of a LC Court has a right to appeal against that decision subject to the provisions of the Act or any written law save for a judgment or order passed or made as a

¹⁴⁷ Ibid.

¹⁴⁸ Ibid., Section 23.

result of the consent of the parties.¹⁴⁹ The Act provides that an appeal shall lie, from the judgment and orders of a village LC Court to a parish LC Court, from the judgment and orders of a parish local council court, to a town, division or sub-county council court, from the judgment and orders of a town, division or sub-county local council court to a court presided over by a Chief Magistrate, 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.¹⁵⁰

According to section 32 (2) (b) of the Local Council Courts Act, 2006, appeals lay from the judgment and orders of a Parish Local Council Court, to a Sub-county Council Court. Although under section 34 of the Act, in exercise of its appellate jurisdiction as LCIII Court had the power, at the instance of the parties or on its own motion, to call witnesses and receive additional evidence as it may in its discretion determine, or to hear the case afresh, this could only be done in exercise of its appellate jurisdiction.

Under sections 32 & 33 of the Local Council courts Act, 2006 the right to appeal is open to all parties that are not satisfied with the decision made by court officials. The procedure for lodging appeals is stipulated respectively under this law.

The LCCs are supervised by the Chief Magistrate. The general powers of supervision over Magistrates' Courts conferred upon the High Court by the Judicature Act may be exercised by the Chief Magistrate over LCCs on behalf of the High Court.¹⁵¹

2.2.4 The Local Council Courts Regulations 2007

The Minister by Section 45 of the Local Council Courts Act; and in consultation with the Minister responsible for justice, made these Regulations on the 11th day of September, 2007.

The objectives of these Regulations are to facilitate the better carrying into effect of the provisions of the Local Council Courts Act, 2006 and in particular, to spell out clearly the operation and procedure of the Local Council Courts, to provide for fees to be paid by users of the LCCs, to provide for the oath to be taken by members of the court, to provide for costs to be awarded by the courts and to provide for other matters such as record keeping, service of documents and other matters intended for the smooth running of LCCs.¹⁵²

¹⁴⁹ Ibid., Section 32(1).

¹⁵⁰ Ibid., Section 32(2).

¹⁵¹ Ibid., Section 40.

¹⁵² Regulation 2, The Local Councils Courts Regulations 2007.

Under the Regulations, a village local council court shall consist of all members of the executive committee of a village.¹⁵³ A parish local council court shall consist of all members of the executive committee of a parish.¹⁵⁴ A sub county local council court shall consist of five members appointed by the sub county council on the recommendation of the executive committee of the sub county council.¹⁵⁵ A town local council court shall consist of five members appointed by the town council on the recommendation of the executive committee of the town council and at least two members of the town council court shall be women.¹⁵⁶ A division local council court shall consist of five members appointed by the division council on the recommendation of the executive committee of the division council.¹⁵⁷ The Members of a court shall hold office for the duration of the term of a council and are eligible for re-appointment.¹⁵⁸

The study findings revealed that the composition of the LCCs was in accordance with the provisions of the law.

“..... The members of the LC1 Executive Committee who also double as Court Officials are 11, namely; Chairperson, Vice Chairperson, Secretary, Treasurer, Defence, Environment, Woman Representation, Representative for the Elderly, Youth Representative, People with Disabilities Representative and Information”¹⁵⁹

Regulation 17(1) (2) stipulates that the time and place of the sitting of a court shall be designated by the chairperson; except that the time shall be between 8.00 AM and 6.00 PM and that the court shall sit as often as the business of the court requires for the speedy discharge of cases.¹⁶⁰

The quorum of the court at any sitting shall be (in the case of a village or parish court, five members including the person presiding, two of whom shall be women, and in the case of a town, division or sub county court, three members including the person presiding, one of whom shall be a woman. The quorum shall be maintained throughout the sitting of the court and if the quorum falls in the course of the sitting, the chairperson or other person presiding shall adjourn the case to another date.¹⁶¹ And for sub

¹⁵³ Ibid., Regulation 4.

¹⁵⁴ Ibid., Regulation 5.

¹⁵⁵ Ibid., Regulation 6.

¹⁵⁶ Ibid., Regulation 7.

¹⁵⁷ Ibid., Regulation 8.

¹⁵⁸ Ibid., Regulation 9.

¹⁵⁹ Mr. Kanya Haruna, Chairperson, Gombe LC1 Court , Gombe Division in an interview conducted on the 30th day of August 2019.

¹⁶⁰ Local Council Courts Regulations 2007.

¹⁶¹ The Local Councils Courts Regulations 2007, Regulation 19 (1) and (2).

regulations (1) (g) to (i) the court shall handle the matter without being restricted by the monetary value of the subject matter in dispute.

Every local Council Court has legal jurisdiction for the trial and determination of the following cases or matters; debts, contracts, assaults or assault and battery, conversion, damage to property, trespass, civil disputes governed by customary law; disputes in respect of land held under customary tenure, disputes concerning marriage, marital status, separation, divorce or the parentage of children, disputes relating to the identity of a customary heir, customary bailment, causes and matters arising out of infringement of byelaws or ordinances and matters specified under the Children Act.¹⁶² A court shall only handle claims and complaints in sub regulations (1) (a) to (e) if the value of the claim or complaint does not exceed 100 currency points¹⁶³ and for sub regulations (1) (g) to (i) the court shall handle the matter without being restricted by the monetary value of the subject matter in dispute.¹⁶⁴

The LCCs also have jurisdiction in criminal cases involving children as per Section 49 of the LCCA. It is provided that in accordance with section 92(2) of the Children Act, a village local council court shall have jurisdiction to try a child for any of the following offences; affray, under section 79 of the Penal Code Act, an offence against section 167 with the exception of paragraph (b) of the Penal Code Act, common assault, under section 235 of the Penal Code Act, actual bodily harm under section 236 of the Penal Code Act, theft, under section 254 of the Penal Code Act, criminal trespass, under section 302 of the Penal Code Act; and (g) malicious damage to property, under section 335 of the Penal Code Act.¹⁶⁵

Under Regulation 27 (2) the village local council court shall be the court of first instance in respect of the criminal offences specified in sub regulation (1) involving children. And in sub regulation (3) of 27 that a village local council court may, notwithstanding any penalty prescribed by the Penal Code Act in respect of the offences stated in sub regulation (1), make an order for any of the following reliefs in respect of a child against whom the offence is proved; reconciliation, compensation, restitution, community service, apology; or caution further under sub regulation 27 (4) in addition to the reliefs under sub regulation (3), the court may make a guidance order under which the child shall be required to submit himself or herself to the guidance, supervision, advice and assistance of a person designated by the court.¹⁶⁶

¹⁶² Ibid., Regulation 26 (1).

¹⁶³ Ibid., Regulation 26 (2).

¹⁶⁴ Ibid., Regulation 26 (3).

¹⁶⁵ Ibid., Regulation 27 (1).

¹⁶⁶ Local Council Courts Regulations 2007.

The LCCs are composed of elected members of the community hence fulfilling the constitutional vision of the participation of the people in the administration of justice by the courts. The Local Council Court I (LCC I) has the original jurisdiction to handle matters stated above. Appeals from LCC I go to the LCC II from which appeals go to the LCC III. Appeals from LC III go to the Chief Magistrates' Court. However, in practice, LC Courts have handled a variety of cases in their communities which exceed their jurisdiction under the law. Designed to bring justice closer to the people and to empower communities, these courts were intended to reflect local complexities and have been embraced with interest. After nearly seventeen years of legal existence, they have become the most significant providers of justice and for the millions, their only viable forum for adjudication of disputes, in various parts of Uganda.

The Regulations provide that person instituting a case or filing an appeal in the local council court shall pay to the court where the case is being instituted or where the appeal is being filed and that the fee is specified in the Third Schedule to these Regulations.¹⁶⁷

As per the Third Schedule to the Regulations, the fees payable as follows;¹⁶⁸

1) For any amount claimed for any debt or breach of contract that is between 0-20,000/= 500/= 2) For any amount claimed for any debt or breach of contract that is more than 20,000/= but less than 100,000/= 1,500/= 3) For any amount claimed for any debt or breach of contract that is more than 100,000/= but less than 500,000/= 2,500/= 4) For any amount claimed for any debt or breach of contract that is more than 500,000/= but less than 1,000,000/= 3,000/= 5) For any amount claimed for any debt or breach of contact exceeding 1,000,000/= but not more than 2,000,000/= 4,000/= 6) For any claim relating to assaults or assault and battery, conversion, damage to property and trespass. 1,500/= 7) For any claim relating to damage to crops 500/= 8) For any claim relating to trespass by animals 1,000/= 9) In case of disputes relating to land under customary tenure. 1,500/= 10) For disputes concerning marriage, marital status, separation, divorce or the parentage of children. 1,500/= 11) In case of disputes relating to identity of a customary heir. 1,500/= Appeals 1) In case of an appeal in respect of any matter from the village local council court to a parish local council court. 2,000/= 2) For an appeal from a parish local council court to a town. division, sub county local council court. 2,500/= 3) In case of an appeal from the town, division or sub county local council court to the Chief Magistrate. 3,000/= 4) for certified copies of every page of the documents of the proceedings. 200/=.

¹⁶⁷ Ibid., Regulation 65 (1).

¹⁶⁸ Ibid., Schedule 2.

The Local Council Courts Act¹⁶⁹ makes provision for payment of fees and the Local Council Courts Regulations provide for an allowance of UGX 10,000/= for members of the court per sitting but restricts this only to town, division or sub county courts leaving out the members of the village and parish courts this is likely to promote corruption by court officials soliciting bribes from litigants and in turn it will affect justice delivery at the local level since the village and parish courts are the nearest points of contact for the public. Further the fact that the LCCA,¹⁷⁰ allows the court fees to be used for allowances, it may motivate these local court courts to charge exorbitant fees than stipulated so as to raise their allowances.

The study findings revealed that despite the LCCs, particularly the LC1s playing a vital role in the maintenance of law and order in Uganda, there are various factors that hinder the LCCs from administering justice within their local jurisdictions and these include but not limited to the following:-
Lack of training in law: - The argument regarding suitability is that most local council leaders are not necessarily proficient in the law whether customary or, with respect to their criminal jurisdiction, common law or statutory law. If this is true, it is prejudicial to litigants and to the credibility of the whole justice system. The procedures followed in the recorded law are technical and can only be understood by persons who have studied law.¹⁷¹

Some LCCs handle cases outside their jurisdiction especially defilement cases. When the LCCs are called to handle cases of defilement they follow the same procedure of promoting mediation between the families. The thinking behind mediation in the case of defilement is that taking the case direct to the police would likely mean jail for the defiler and if that is a young boy it could mean ruining his life. Having the boy's parents pay a fine or having the boy and the girl get married is more beneficial to the parents and to the LC as it would involve a bride price for the girl and collection of a mediation fee by the LCCs. In addition, it promotes reconciliation between the families. Conversely, actions such as these do not take into consideration the situation of the girl herself.

Financial considerations often seem to be the motivating factor behind the LCCs handling cases beyond their jurisdiction.

The challenges faced by these Court are not different from the ones advanced by Nampewo (2016). According to the research by Nampewo (2016) most LCCs do not have registers for the cases they handle. Neither do they number their cases serially. This makes it very difficult to trace a case for any reason (say for appeal or research purposes). In general, LCCs do not keep proper records of

¹⁶⁹ Section 42(2).

¹⁷⁰ Ibid.

¹⁷¹ Kabwegyere T.B, *People's Choice, Peoples' Power: Challenges and Prospects of Democracy in Uganda*. Kampala, Fountain Publishers, 2000.

proceedings, it is clear that the facts of the cases and evidence tendered at the hearings are not accurately and systematically recorded and kept as required by law.

In cases where the courts conducted a locus in quo, the case file only shows a list of people in attendance only but no record of proceedings, yet the evidence adduced during the proceedings were relied upon in the final decision. *'Locus in quo'* is a Latin word that has been defined as; 'the place where an event allegedly occurred.

The performance of the LCCs in the administration of justice is a major factor for legitimacy of the lower local government system and promotion of good governance. If LCCs performs their judicial responsibilities poorly, they will lose legitimacy in the communities and thus also perform poorly in areas of development planning, administration and revenue collection.

2.3 The International Legal Framework on Access to Justice

Access to justice is a fundamental human right guaranteed by International Human Rights Law to wit Uganda is a signatory.

United Nation Development Programme defines 'access to justice' as the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.¹⁷² Access to justice should be without discrimination to age, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status and all persons should be equal before the law.

2.3.1 The Universal Declaration of Human Rights (UDHR) 1948

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages. The UDHR is widely recognized as having

¹⁷² UNDP, *Programming for Justice: Access for All, A practitioner's guide to a human rights-based approach to access to justice* (2005). UNDP works in about 170 countries and territories, helping to eradicate poverty, reduce inequalities and exclusion, and build resilience so countries can sustain progress. As the UN's development agency, UNDP plays a critical role in helping countries achieve the Sustainable Development Goals. The Sustainable Development Goals (SDGs), otherwise known as the Global Goals, are a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity.

inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles)¹⁷³

The UDHR provides for the right of everyone to take part in the government of his/her country either directly or through freely chosen representatives.¹⁷⁴

Further Articles 7 and 8 of the Declaration recognizes that all people are equal before the law and are entitled without any discrimination to equal protection of the law and all have right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him/her by the constitution or by law.¹⁷⁵

As a part of the international community, Uganda has adopted national laws that enable both men and women to be elected as representatives of the people and for citizens both men and women of 18 years and above to vote for their leaders. For example there is the LCCA which has extended justice to the people at the grass root and the people have a right to vote the representatives of their executive committees.

2.3.2 The International Covenant on Civil and Political Rights 1966 (ICCPR)

The ICCPR is an international human rights treaty adopted by the General Assembly of the United Nations on 19 December 1966. The Covenant provides for protection of civil and political rights. It obligates countries that have ratified the treaty to protect and preserve basic human rights. The Covenant compels governments to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy to the violations thereof.

Article 25 stipulates that every citizen shall have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and to have access, on general terms of equality, to public service in his country.

Article 26 is to the effect that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth

¹⁷³ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, (accessed on 5/6/2021).

¹⁷⁴ Article 21.

¹⁷⁵ Universal Declaration of Human Rights (UDHR) 1948.

or other status.¹⁷⁶ Article 2 (3) of the Covenant mandates effective remedies for persons whose rights or freedoms are violated.¹⁷⁷

Uganda being a signatory to this Covenant, it has put laws in place such as the LCCA and Regulations thereunder which have extended justice to the people at the grass root through giving them a right to vote the representatives of their executive committees.

2.3.3 The Convention on Elimination of all Forms of Discrimination against Women (CEDAW) 1985.

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly on 18 December 1979. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified. The Convention was the culmination of more than thirty years of work by the United Nations Commission on the Status of Women, a body established in 1946 to monitor the situation of women and to promote women's right. The implementation of the Convention is monitored by the Committee on the Elimination of Discrimination against Women (CEDAW). The Committee's mandate and the administration of the treaty are defined in the Articles 17 to 30 of the Convention.¹⁷⁸

In 1985, Uganda adopted and ratified the Convention on Elimination of all Forms of Discrimination against Women (CEDAW). When a country signs and agrees to abide by an International Law, it is required to develop national laws to implement its provisions and to report on its progress with regard to implementation of the law.

Article 3 provides States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.¹⁷⁹

The CEDAW in Article 7 calls upon States parties “to take all appropriate measures to eliminate discrimination against women in the political and public life of the country”. At its sixteenth session (1997), the Committee on the Elimination of Discrimination against Women adopted general recommendation 23 regarding the participation of women in political and public life. It emphasized that

¹⁷⁶ The International Covenant on Civil and Political Rights 1966

¹⁷⁷ Ibid.

¹⁷⁸ <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx> , (accessed on 5/6/2021).

¹⁷⁹ The Convention on Elimination of all Forms of Discrimination against Women (CEDAW) 1985.

States parties should ensure that their constitutions and legislation complied with the principles of the Convention and that they were under obligation to take all necessary measures, including temporary special measures, to achieve the equal representation of women in political and public life.

Uganda through the 1995 Constitution and electoral laws has a defined legal framework to enhance the equal participation of men and women in political life. Both women and men are free to stand and be voted into different political offices; which also include courts and in that way they are able to administer and access justice.

2.3.4 The Beijing Platform for Action 1995

The Beijing Declaration and Platform for Action of 1995 is a visionary agenda for the empowerment of women, it was the outcome of the Fourth World Conference on Women, held in Beijing, China, in September 1995.

The Fourth World Conference on Women, held in Beijing in 1995, drew attention to the persisting inequality between men and women in decision-making. The Beijing Platform for Action reaffirmed that women's persistent exclusion from formal politics, in particular, raises a number of specific questions regarding the achievement of effective democratic transformations, in practice. It undermines the concept of democracy, which, by its nature, assumes that the right to vote and to be elected should be equally applied to all citizens, both women and men. The absence of women from political decision-making has a negative impact on the entire process of democratization. The Beijing Platform for Action emphasized that "women's equal participation in decision making is not only a demand for justice or democracy, but can also be seen as a necessary condition for women's interests to be taken into account. Without the perspective of women at all levels of decision-making, the goals of equality, development and peace cannot be achieved."). The Beijing Platform for Action defined two strategic objectives in its critical area of concern on women in power and decision-making: to ensure women's equal access to and full participation in power structures and decision making; and to increase women's capacity to participate in decision-making and leadership.¹⁸⁰

Article 13 provides for women's empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power which are fundamental for the achievement of equality, development and peace.¹⁸¹

¹⁸⁰ The Beijing Platform for Action 1995.

¹⁸¹ Ibid.

Under Article 124 (h) the Governments were to provide women who are subjected to violence with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm they have suffered and inform women of their rights in seeking redress through such mechanisms.¹⁸²

Uganda is a state party to the international conventions on women's rights and is expected to abide by the provisions of the laws its party to. It is also expected to report on progress being made with regard to the participation of men and women in decision making. This has created an alternative to access to justice through the establishment of the LCCs which are more accessible than the formal Courts.

2.4 The Regional Legal Framework on Access to Justice

2.4.1 The African Charter on Human and Peoples Rights

The African Charter established the African Commission on Human and Peoples' Rights. The Commission was inaugurated on 2 November 1987 in Addis Ababa, Ethiopia. The Commission's Secretariat has subsequently been located in Banjul, Gambia.¹⁸³ Under Article 45 of the Charter, the Commission is charged with the protection of human and peoples' rights, the promotion of human and peoples' rights and the interpretation of the African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights is also referred to as the Banjul Charter. The Banjul Charter recognizes the rights and freedoms of African citizens in the political, social, economic and cultural spheres, both individually and collectively. The Banjul Charter recognizes all persons as equal before the law and as being entitled to equal protection of the law.

Article 2 is to the effect that every individual is entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without discrimination such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status. In Article 3 that every person is equal before the law and entitled to equal protection and treatment¹⁸⁴

The Principles promoting access to justice can be read in the provisions of Article 7 which recognize the right of every individual to have his cause against acts of violating his/her fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force heard. This also includes the right to defence.¹⁸⁵

¹⁸² Ibid.

¹⁸³ <https://www.achpr.org/aboutus>, (Accessed on 5/6/2021).

¹⁸⁴ The African Charter on Human and Peoples Rights.

¹⁸⁵ Ibid.

2.4.2 The African Charter on Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child is a regional human rights treaty adopted in 1990 and which came into force in 1999. It sets out rights and defines principles for the status of children.

Article 3 of the Charter is to the effect that every child is entitled to the enjoyment of the rights and freedoms recognized and guaranteed in Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.¹⁸⁶

This charter sets out by recognizing from the outset that the 'needs of the child due to his physical and mental development requires particular care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security'. It recognizes the rights of children in the area of civil, political, economic and social cultural rights. Article 4 addresses the legal status of the child in judicial proceedings within the principle of the best interests of the child. It notes that children's views must be respected in all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views.¹⁸⁷

Article 17 addresses Juvenile Justice for children in conflict with the law. It requires that such a child shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence. Further, such trials are to be determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal. Such a positive provision entails an understanding that children are to be availed legal aid to enable them realize their rights to access justice in a meaningful manner.¹⁸⁸

2.4.3 The Maputo Protocol on Rights of Women in Africa

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) which was adopted in 2003 remains one of the most progressive legal instruments providing a comprehensive set of human rights for African women. Unlike any other women's human rights instrument, it details wide-ranging and substantive human rights for women covering the entire spectrum of civil and political, economic, social and cultural as well as environmental rights. Many African Union Member States have established special national machineries to promote and protect the rights of women. In addition to human rights commissions, which are traditionally regarded as National Human Rights Mechanisms, there are specific Gender Equality or Equal Opportunities Commissions

¹⁸⁶ The African Charter on the Rights and Welfare of the Child.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

specifically dedicated to the rights of women. These are found, for example, in countries such as Uganda, Kenya, Rwanda, South Africa and Zimbabwe.¹⁸⁹

The Maputo protocol recognizes the rights of women and their freedom from all forms of discrimination. Article 8 recognizes the right of access to Justice and Equal Protection before the Law, noting that women and men are equal before the law and shall have the right to equal protection and benefit of the law and highlights the right to effective access by women to judicial and legal services, including legal aid.¹⁹⁰

The Maputo Protocol also provides for support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitize everyone on the rights of women and that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights; that women are represented equally in the judiciary and law enforcement organs; reform of existing discriminatory laws and practices in order to promote and protect the rights of women.

2.5 National Policy Frameworks

2.5.1 The National Development Plan

The National Development Plan (NDP) stipulates the Country's medium term strategic direction, development priorities and implementation strategies. In addition, it details Uganda's current development status, challenges and opportunities. In line with the National Vision Framework, six (6) five-year NDPs will be implemented and so far, two NDPs have been produced. The first NDP (NDPI) was for the period 2010/11 – 2014/2015 and the second NDP (NDPII) is from 2015/16 – 2019/2020 and the third NDP (NDPIII) is from 2020/2021 – 2024/2025. The NDPII builds on the achievements of NDPI which was largely based on strengthening the foundation of the economy to set the stage for future economic growth and social transformation.¹⁹¹ The National Development Plan (NDPIII) is the third in a series of six NDPs that will guide the nation in delivering the aspirations articulated in Uganda Vision 2040. The NDPIII is anchored on the progress made, challenges encountered and lessons learnt from previous planning and implementation of NDPI and NDPII. The NDPIII comes into effect at the time

¹⁸⁹Maputo Protocol on Womens Rights a living document for womens human rights in africa submitted by the women gender and development directorate wgdd of the african union commission <https://au.int/sites/default/files/documents/31520-doc-pdf> (Accessed on 5/6/2021).

¹⁹⁰ The Maputo Protocol on Rights of Women in Africa.

¹⁹¹ <http://www.npa.go.ug/development-plans/national-development-plan-ndp/>, (Accessed on 5/6/2021).

when the country and the World are battling the COVID-19 pandemic that has posed social and economic impacts.¹⁹²

Objective 3 of the NDP III focuses on strengthening transitional justice and informal justice processes; – the Uganda Vision 2040 prioritized improving access to justice through enhancing physical presence of institutions involved in the delivery of justice. This was to be achieved through construction of justice centres to ensure completeness of the chain of justice across all districts.¹⁹³

2.6 Conclusion

Uganda being a signatory to the above stated Regional and International Conventions, has ensured access to justice to all through enacting national laws as discussed in this chapter that provide for formal and informal mechanisms of dispute resolutions. Formal mechanisms of justice are fairly expensive, inaccessible and time consuming and thereby informal justice mechanisms taking preference. LCCs have been the most immediate form of justice for local communities. Despite the above the LCCs are not user friendly as they ought to be, the adjudicators have been found to lack knowledge in the law and human rights and the courts have been inadequately facilitated, the judicial adjudicators must understand their mandate and have the ability to adjudicate the cases by properly applying the law and knowing procedural aspects of the law which challenges have affected justice delivery at the local level.

Despite the flaws in the laws relating to LCCs, LCCs have been the most immediate form of justice for local communities since access to formal justice is fairly expensive, inaccessible and time consuming. Therefore weaknesses in the law have to be addressed if the LCCs are to live to their mandate of administering justice at the local level.

¹⁹² National Development Plan (NDPIII), accessed on http://www.npa.go.ug/wp-content/uploads/2020/08/NDPIII-Finale_Companded.pdf, accessed on (5/6/2021).

¹⁹³ Ibid, page 193.

CHAPTER THREE

A COMPERATIVE STUDY ON THE OVERVIEW OF LOCAL COUNCIL COURTS OR OTHER FORMS OF INFORMAL JUSTICE ADMINISTRATION SYSTEMS IN ENHANCING ACCESS TO JUSTICE IN AFRICA

3.1 Introduction

The purpose of the chapter is to provide a vibrant understanding of the adaptability of how selected jurisdictions across the globe have embraced informal justice administration mechanisms to promote accessibility of justice at the grassroots. It is however paramount to note that this will be undertaken in comparative with the Local Council Courts system in Uganda.

As countries seek to make progress towards achieving Sustainable Development Goal 16,¹⁹⁴ there is growing recognition that it is essential to work with both state and non-state justice systems to strengthen the rule of law and effectively prevent and resolve conflicts. In many parts of the world, people turn to customary and informal systems to address their grievances and obtain justice. Village courts, councils of elders and religious leaders can provide an easily accessible and affordable path to resolving disputes and criminal matters, and one that is often considered more familiar and flexible than the formal court system. According to some estimates, over 80 per cent of legal disputes are resolved outside of the formal court system.¹⁹⁵

The informal justice systems functions as an alternative dispute resolution forum or as a complement to the formal court systems. The informal systems are based on customary practices, traditions and rules of communities that have, over time, been deemed to be customary law. Informal justice systems are the cornerstone of accessing justice for the majority of the population in many countries, and recourse to the formal system is only contemplated, if at all, as a last resort. Most local communities shun the formal courts because of being expensive, mistrust of the law, fear, intimidation and corruption; it usually takes a long time to process cases and pass judgment.

Some of the common characteristics of informal justice systems are that a problem is viewed as relating to the whole community as a group – there is strong consideration for the collective interests at stake in disputes, decisions are based on consultation and there is an emphasis on reconciliation and restoring

¹⁹⁴ Sustainable Development Goals, *Promote just, peaceful and inclusive societies. Conflict, insecurity, weak institutions and limited access to justice remain a great threat to sustainable development*, (<https://www.un.org/sustainabledevelopment/peace-justice/>) (Accessed on 6/6/2021).

¹⁹⁵ International Development Law Organisation, *Engaging with Informal Systems to Enhance Justice for Women*, 24/10/2019, <https://www.idlo.int/news/story/engaging-informal-systems-enhance-justice-women>, (Accessed on 5/6/2021).

social harmony, high degree of public participation, flexible rules of evidence and procedures. There is no distinction between criminal and civil cases, informal justice systems often deal with both, there is no separation between informal justice systems and local governance structures – a person who exercises judicial authority through an informal justice system may also have executive authority over the same property or territory.¹⁹⁶

Under the international human rights standards, providing accessible justice is a state obligation which obligation does not require that all justice be provided through formal justice systems. Informal justice is a mechanism to enhance the fulfilment of this obligation by delivering accessible justice to individuals and communities where the formal justice system does not have the capacity or geographical reach.¹⁹⁷ In many countries in especially in Africa many communities consider the informal courts as the primary source of dispute resolution. Informal justice systems appear to have an enduring cultural legacy in large parts of Africa to wit; in some States they are the subject of specific constitutional or legislative provisions that recognize them and regulate their authority and jurisdiction.¹⁹⁸

The structure of the informal justice system is closely connected to that of the formal court system because the informal justice systems fills the gap in the services offered by the formal court system in the administration of justice though, the designs of informal justice systems change with the needs of the society. The informal justice systems have undergone considerable changes in response to colonialism and after independence. The informal mechanisms of justice are often less corrupt than formal justice systems, more accessible to poor, disadvantaged people and may have the potential to provide speedy, affordable and meaningful remedies though they are not always effective and do not necessarily result in justice.¹⁹⁹

In most countries where informal justice systems are legally recognized, there are limits on subject matter and personal jurisdiction, although some informal justice systems have competence to decide serious crimes, including murder. Some States like Malawi, Namibia and Zambia retain a vertical structure where the informal justice system forms the lowest levels of the court system and others like Uganda have a parallel system where the informal courts and the formal court serve alongside one another and provide the parties with a choice of forum.²⁰⁰

¹⁹⁶ Ewa Wojkowska, *Doing Justice: How informal justice systems can contribute*, (December, 2006), page 16

¹⁹⁷ https://www.unicef.org/protection/files/INFORMAL_JUSTICE_SYSTEMS.pdf (Accessed on 23/3/19).

¹⁹⁸ United Nations Human Rights office of the High Commission, *Human Rights and Informal Justice Systems in Africa* New York and Geneva 2016 page11.

¹⁹⁹ *Ibid.*, pages 13-30.

²⁰⁰ *Ibid.*, pages 13-30.

In Uganda the LCCs initially enjoyed a measure of legitimacy largely due to their reputation for delivering speedy and affordable justice. They were in most places commended for being accessible, quick in delivering justice, using simple procedures and familiar language, allowing for broader community participation and being oriented toward reconciliation. In Uganda's LC Courts the members who serve on the lowest tier (LC 1) are directly elected, while those serving on higher levels are elected by an electoral college.²⁰¹

Uganda and Tanzania have tried to address this issue of providing accessible justice to the communities at the grassroots by incorporating elections into their justice systems. Tanzania's 1999 Village Lands Act provides for elected Village Land Councils, who report to the Commissioner of Lands however, there is no indication of how the system is working and whether it enjoys acceptance and legitimacy. On the other hand, Kenya has never employed electoral representation in local justice to wit; the staffing has always been by appointment, the Land Adjudication Committees and the Land Disputes Tribunals are constituted by appointments by the Minister for Lands and the District Commissioner respectively. Similarly, the provincial administrators are civil servants appointed by the government.²⁰²

The use of appointment has led to mixed results since in some areas the appointments coincide with local people's perception of the appointee as credible and in others it has been more obvious that political patronage was at work. Therefore, perceptions of the institutions themselves varies from place to place, depending on who is in office at any particular moment. This is particularly true of the provincial administrators (chiefs and assistant chiefs). In some places their role is viewed quite negatively, to the extent of calling for the scrapping of the provincial administration system altogether. These calls for abolition have been taken up in the draft constitution prepared by the Constitution of Kenya Review Commission to wit; the Commission proposes to replace it with a strengthened and more decentralized local government system. If the proposal does succeed, the default informal dispute resolution role that is currently being filled in by these local administrators will have to be addressed by some alternative structure. It is not yet clear what that alternative will be.²⁰³

²⁰¹ Celestine Nyamu-Musembi *Review of Experience in Engaging with Non-State Justice Systems in East Africa* (February 2003) pages 17-19. <http://www.gsdr.org/docs/open/ds37.pdf> (Accessed on 23/3/19).

²⁰² Ibid.

²⁰³ Ibid., 17-19,

3.2 Rationale for the use of Informal Justice Systems in providing Access to Justice

The unique features such as community leaders being the decision makers, public participation by community members and proceedings aiming at reconciliation and maintaining harmony in the society have made local justice systems unique from the formal courts. In many communities, rural populations under informal justice systems deal with an enormous majority of disputes, where access to the formal court system may be difficult. For example, in South Africa the Constitution, makes express provision for the recognition of the courts of traditional leaders and, while magistrates' courts and high courts dispense justice in urban areas largely in accordance with Western legal principles, approximately 1,500 traditional rulers bring affordable justice to the rural population according to a familiar style of law, language and procedure.²⁰⁴

The rationale for the resolution of disputes in the formal justice system are insufficient resources by the litigants, unfamiliarity with and distrust of the procedural and substantive law and; fixed or rigid procedures and approaches in formal courts. The use of local leaders, informal procedures, community participation, and a primary focus on reconciliation and reparation differentiates informal justice systems from the formal courts, where procedures are adversarial, complex and long, and outcomes such as a prison term or a large monetary award may appear ill adapted to reality.²⁰⁵

The cost, travel and time required to institute a case in a formal court makes it inaccessible or at least impractical to a large percentage of the population especially in the rural areas, further the use of formal procedures may necessitate legal representation which is almost a cost. Formal courts are also faced with the problem of language barriers since English is the language of the courts and thus the illiterate litigants will need interpreters to follow their proceedings. The formal courts may not always be well equipped to hear disputes and render judgments promptly and equitably, formal court systems are unfamiliar to the illiterates while informal justice systems are accessible, cheaper, faster and more familiar to wit; proceedings are held in the evenings or on weekends and in the local language of the community.²⁰⁶

The sanctions imposed or reparations awarded in the informal courts may be more appropriate since they are aimed to preserve social harmony, facilitate reconciliation and judgments are generally made

²⁰⁴ United Nations Human Rights office of the High Commission, Human Rights and Traditional Justice Systems in Africa New York and Geneva 2016 page 36-38.

https://www.ohchr.org/Documents/Publications/HR_PUB_16_2_HR_and_Traditional_Justice_Systems_in_Africa.pdf (Accessed on 9/6/2021).

²⁰⁵ Ibid.

²⁰⁶ Ibid.

with attention to the resources of the respondent. They are generally perceived as less corrupt than the formal courts as well.²⁰⁷

3.3 Subject Matter and Personal Jurisdiction

Some Countries with regulated informal justice systems; jurisdiction of these courts has been limited to family matters, juvenile issues, inheritance and minor criminal offences, however some states have exercised jurisdiction not vested in them due to the illiteracy and ignorance of the leaders in these informal courts.. In some countries, serious crimes such as murder are still heard and determined in informal or informal courts and in exceptional cases capital punishments awarded. In addition to family matters, juvenile issues, inheritance or minor criminal offences, depending on the community cases such as compensation for wrongful acts and accidental personal injury, liability for animals, inheritance (including oral wills and funeral rites), assignments of rights and duties, rights in land, taxation, contractual agreements, including matters relating to the exchange of goods, bailment, loans, employment and trade, matters relating to murder, acts of cruelty and punishment are handled in the informal courts. Where jurisdiction is formally specified through statute or constitutional provision, it is limited by either the available remedy maximum fines, for example or by the subject matter of the case. In States that do not have such a provision, custom or general practices serve as informal guidelines. A significant number of informal justice systems do not exercise jurisdiction over serious crimes, but refer them to the police and the formal courts for necessary action.²⁰⁸

3.4 Institutional Structure of informal justice systems

The informal justice system was established to fill the gaps in the formal court system. in regard to the needs of the community and the services offered by the formal court system. The structure of the informal justice systems changes with the changes in the formal court system and with the needs of the community. informal justice systems have undergone considerable change in response to colonialism and, later, independence leading to dual models of justice systems (where the informal and formal justice systems exist alongside one another). Following independence, there was an attempt in some states to suppress informal justice systems and, in some states, informal justice mechanisms continued to exist without legal recognition. In other cases, the two systems developed an integrated and complementary structure. Countries like Mozambique, Malawi and Sudan were integrated the informal justice system into the formal justice system, the informal systems becoming the lowest level of the justice system and in countries like Uganda, Zimbabwe and South Africa the informal forums serve as a parallel forum over which the formal courts would have appellate jurisdiction. Further in some countries, the litigants

²⁰⁷ Ibid.

²⁰⁸ Ibid, page 37.

have a choice of going to the informal justice system or the formal court system while in others, informal justice mechanism is the sole forum available. Even in countries where the formal courts have incorporated elements of informal justice systems or are authorized to apply customary law, informal justice systems may continue to operate independently in their original form. However, expediency and lack of resources have led many States to continue to rely, at least in part, on informal justice systems to settle disputes and dispense justice, particularly in rural and remote areas.²⁰⁹

The vast majority of informal systems like in Sierra Leone, South Africa and South Sudan do not or prohibit the use lawyers in the proceedings and the members of the informal justice mechanism do not have formal legal training and are often unfamiliar with their country's written legal code. The use of simple, well-known and generally accepted procedures and reliance on local customary law arguably lessen the need for lawyers and judges with legal training. Informal authorities generally seek to reach a decision that has the consent of the parties and the consensus of the community. Whether true consent has been achieved is another matter however, as the leaders or the community may exert pressure on the parties to agree with the decision. Following the resolution of the dispute, it is common practice in many informal courts for the parties and the community to express their reconciliation through a ritual or ceremony. In Burundi, for example, the parties would share a drink to thank the *bashingantahe* (leaders) and to mark the beginning of a new relationship.²¹⁰

In Malawi the informal justice system is based on the recognition of traditional authorities. The Chiefs Act of 1967 provides that traditional authorities are the administrative head of local communities. Although the Chiefs Act does not specifically provide for any adjudicator function for traditional authorities, it is considered to be part of their functions and is recognized as such in local communities. Article 110 of the Constitution of the Republic of Malawi recognizes customary law, which the traditional authorities generally apply in resolving disputes. They have a hierarchical structure that goes from village headman to group village headman, sub-traditional authority, traditional authority, senior traditional authority and, finally, principal chief. The functions include preserving the peace and carrying out the traditional functions of office under customary law, provided that this is not contrary to the Constitution, any written law, or repugnant to natural justice or morality. Traditional authorities are reportedly involved in dispute resolution in a variety of matters, including civil disputes, family law matters, inheritance, minor damage to property and boundary disputes. Although criminal cases do not fall within their jurisdiction, traditional leaders often deal with minor disturbances of the peace.²¹¹

²⁰⁹ Ibid., page 23-24.

²¹⁰ Ibid., page 28-29.

²¹¹ United Nations Human Rights office of the High Commission, Human Rights and Traditional Justice Systems in Africa New York and Geneva 2016 page 32.

In Mozambique in 1975 during the colonial period, there were two separate legal systems to wit; formal one, primarily for the European and assimilated populations and a customary one for the rest of the population, based on kinship or colonially appointed traditional leaders. After independence, there was an official ban on traditional leaders resolving disputes. However the Popular tribunals which were established in 1978 could draw on customs and usage in local regions, but the State strongly discouraged polygamy, marriage payment and child marriages. In 1992, a law was adopted to establish community courts as a substitute for popular tribunals, which were abolished. In 2004, Mozambique recognized legal pluralism in article 4 of its Constitution, provided dispute resolution systems did not apply norms contrary to the fundamental values of the Constitution; today, community courts exercise jurisdiction over minor civil and criminal offences; judgments are limited to fines and community service. More serious offences and larger civil cases are adjudicated in the formal district and provincial court.²¹²

In 2003 South Africa adopted the Traditional Leadership and Governance Framework Act, which legitimized traditional leaders and mandated State support for them. The informal (though not officially recognized) community court decisions are appealable to the area committee, which is not part of the officially recognized traditional court system . The officially recognized traditional courts apply what has been termed “living customary law”, while other State courts apply both State law and recorded. The South African courts have decided a number of interesting cases regarding the compatibility of customary law administered by traditional courts with the rights as set out in the State’s Constitution. In *Bandindawo and others v. Head of the Nyanda Regional Authority and another, 1998 (3) SA 262 (Tk)*, a case involving only civil jurisdiction, the argument was made that a litigant appearing before a traditional court would experience a lower standard of justice than that offered by a magistrates’ court, thereby violating the principle of equality before the law. The court conceded that considerable differences distinguished customary courts from the formal judicial system, but held that these differences were consonant with a particular cultural orientation and that, consequently, the right to equal treatment could justifiably be infringed.²¹³

3.5 Composition of Informal Justice Mechanisms and Community Involvement

In the informal justice systems decisions are made by members of the community to wit; the chief or sub chiefs, headman or headwoman, a group of elders who provide leadership for the community, or by direct decision of the community itself in the form of a general assembly. In some communities, traditional leaders are chosen for the explicit purpose of performing a judicial or quasi-judicial role. In others, a person’s position as a traditional political leader of the community includes the responsibility

²¹² Ibid.

²¹³ Ibid, page 38.

to hear and resolve disputes. In some States, community courts have been established by the State, and they often fall under the indirect control or influence of traditional leaders, who nominate candidates for the posts to be filled. Formal qualifications are generally not required; reports of unfamiliarity with statutory law and illiteracy are common. While familiarity with the litigants can be helpful in the fact-finding process, it also opens up the opportunity for corruption, as well as bias in favour of the more powerful members of the community. Nevertheless, informal justice systems are generally considered less corrupt than formal justice systems.²¹⁴

The community involvement ranges from the inclusion of the parties and witnesses in the proceedings to the participation of the entire community and decisions must be viewed as acceptable by the Community. Most informal court proceedings involve interested members of the community in the fact-finding and reconciliation process. In some communities, statutes governing the procedure require that the forum be open to the public. Public hearings are prevalent in informal justice systems and reflect their primary emphasis on reconciliation at the community level.

In South Africa, for example, the officially recognized customary (traditional) courts allow litigants to bring supporters, particularly family and friends, and permit the community members in attendance to ask questions and offer comments. In *xeer* proceedings for inter-clan disputes in Somalia, the parties, together with their clans, choose to accept or reject the decisions of the elders (representatives from each clan and sometimes a third-party clan as well), and choose to appeal the case or to have a new hearing with a different set of *xeer beegti* (group of elders). The agreement of the clan to the decision makes sense given its collective responsibility for offences committed by one of its members. Second, community involvement fosters reconciliation and maintains the social order, both of which are viewed as important goals of the informal justice systems. Contested decisions could threaten these relationships. The participation is particularly important where the family or community share responsibility for complying with the judgment and implementing the remedy or punishment.²¹⁵

3.6 Establishment of the informal justice systems

In Kenya, measures such as LDTs were introduced hurriedly to plug gaps in the previous system of panel of elders. The panels of elders in turn had been set up hurriedly as a populist measure in response to a presidential promise to make land dispute processing cheaper for the *wananchi* and the measure was not discussed at length in parliament and there was no public consultation on the proposals at all. The

²¹⁴ Ibid., page 24-25.

²¹⁵ Ibid., page 26

government did the easy thing by setting up tribunals by the quickest means possible: through the provincial administration, which has a centrally supervised structure with a deep reach into the grassroots. The question of legitimacy was not addressed. While in Tanzania, by contrast, the establishment of Village Land Councils under the Land Act was preceded by broad nationwide consultation via a presidential commission of inquiry; a situation similar to that of Uganda in the establishment of the LCCs.²¹⁶

3.7 Accountability in the Informal Justice Systems

In Uganda the LC Courts' accountability is downwards that is; to the people whom the arrangement is intended to serve, through the periodic election of the members. It should be noted that this accountability is only periodic and does not address on-going accountability for their exercise of quasi-judicial functions. Some LC Courts are perceived by the public as corrupt and subject to abuse by powerful officials. In Kenya's LDTs and Land Adjudication Committees, the appointees are answerable to the minister or District Commissioner who appointed them. The process of appointment itself is not spelled out so there is no transparency and no basis for opening up an appointment for questioning or calling for review of an elder's performance.²¹⁷

In ancient Rwanda, disputes were traditionally settled among community members of the same lineage. Proceedings, being pre-colonial, were informal, and it is from the nature of this informality that the courts got their name Gacaca which literally translates into justice on the grass, and this name comes from the dry grass that the court sat on during the resolution of a conflict. After extensive research and consultation, the Rwandan parliament adopted the traditional Gacaca courts for the purpose of trying genocide suspects. In 2001, the first Gacaca law was passed and this was widely amended in 2004 and 2006 to give the system its present existence and form.²¹⁸

Despite the fact that formal courts of Rwanda and the International Criminal Tribunal for Rwanda (ICTR) located in Arusha, Tanzania, had a mandate to try the key actors in the planning, organization and supervision of the 1994 genocide, in 1994 Rwanda established Gacaca Courts to try the perpetrators of the genocide approximately 800,000 persons having been killed especially members Tutsi, Hutus. In the months immediately after the genocide, approximately 120,000 suspects were detained in prisons with a capacity of only 45,000 in very harsh conditions and the Country's devastated judiciary was not

²¹⁶ Nyamu-Musembi, *op.cit.*p20.

²¹⁷ Ibid.

²¹⁸ The Role of Custom and Tradition in Fostering Reconciliation in Northern Uganda: Lessons from the Gacaca Courts of Rwanda (October 23 2006), <https://papers.ssrn.com> (Accessed on 23/9/2020)

able to try and prosecute the said perpetrators within in a Government of Rwanda established “new” *Gacaca* Courts by national legislation as a temporary, transitional measure to try and prosecute the said perpetrators and to promote reconciliation. These were broadly inspired by the traditional or “old” *gacaca* courts, although the new courts had far greater powers. .²¹⁹

The old *gacaca* courts had diminished in importance in Rwanda before the genocide and, where they continued to exist, had focused on resolving mostly minor disputes at the community level. During the colonial era, the *gacaca* courts had been prohibited from judging serious crimes. The goal of the old community-level *gacaca* courts was to restore order and social harmony, whereas the function of the new *gacaca* courts was largely punitive. These new *gacaca* courts were expressly designed to try and prosecute very large numbers of persons who had engaged in serious crimes, including murder, during the genocide and were established to ensure that there would be no impunity or immunity for the perpetrators of genocide. The new *gacaca* courts could sentence defendants to life in prison for the most serious crimes. Accused persons were not allowed to have a defence lawyer even for the most serious crimes. Also, persons who confessed to crimes rather than contested the charges against them were given significantly reduced sentences. The new *gacaca* courts also passed sentences of community service, although it has been argued that community service as a sentence was too lenient for the crimes found to have been committed by some perpetrators. The new *gacaca* courts were dissolved in 2012 after most of the accused had been either judged or released. It has been estimated that approximately 12,000 *gacaca* courts were established and that as of 2011 they had tried over one million cases relating to the 1994 genocide, while the national courts had tried only 1,290.69 persons.²²⁰

Just like the Local Council Courts in Uganda, the *Gacaca* courts sought to encourage forgiveness and reconciliation among the Rwandan populace. *Gacaca* courts were less adversarial than the classical courts, but based mainly on principles of honesty and openness. The judges were elected by the members of the community from among themselves, and the communities were encouraged to realise that the accused persons were most times not entirely to blame for their actions, and so deserve a second chance in the community.

3.8 Conclusion

The prevalence of informal justice systems demonstrates that justice strives to adjust to people’s realities through creating remedies for their immediate needs as they often serve to fill the gaps of the formal courts, which may not be easily accessible to persons in traditional communities. Where formal informal

²¹⁹ United Nations Human Rights office of the High Commission, (supra) page 36-38.

²²⁰ Ibid.

justice systems complement each other, may be the best option for many States. Each system can fulfill needs that the other cannot, or at least not easily. For example, informal justice mechanisms may be best suited form for disputes in traditional communities, while serious disputes require the procedural safeguards of the formal courts. The litigants before an informal justice mechanism should have the choice to bring their claims to a formal court, particularly if they do not feel the informal justice forum will adequately protect their interests. Accessibility and choice of forum alone are not sufficient, however all justice systems, including both the formal courts and informal justice forums, must serve the needs of the population while upholding human rights standards.

CHAPTER FOUR

DATA ANALYSIS, PRESENTATION AND DISCUSSION OF FINDINGS

4.1 Introduction

This chapter presents and discusses the findings of the study. The findings are presented following the objectives of the study that include: to find out factors responsible for promoting and hindering LCCs from administering justice in Nansana Municipality; to evaluate the effectiveness of the legal framework on LCCs in Uganda; and to make recommendations for effectiveness of LCCs in administering justice in Nansana Municipality and Uganda at large.

The study was conducted in the four divisions of Nansana Municipality to wit; Nansana Division, Nabweru Division, Gombe Division and Busukuma Division.

During the study it was established that; **Nansana Division** has a total number of **23 LC1 Courts** (Cells/villages) to wit; Nansana Ochieng I, Nansana Ochieng II, Nansana 7/8 I, Nansana 7/8 II, Kazo Central I, Kazo Central II, Kazo Lugoba I, Kazo Lugoba II, Kazo Muganzilwazza I, Kazo Muganzilwazza II, Nansana East I A, Nansana East II A, Nansana East I B, Nansana East II B, Nansana West I A , Nansana West II A, Nansana West II A, Nansana West I B, Nansana West II B , Nabweru South 1, Nabweru South II, Nabweru South II, Nabweru North I and Nabweru North II , **6 LC11 Courts** (Wards) to wit; Kazo Ward, Nabweru South, Nabweru North, Nansana West, Nansana East and Nansana 7/8 Ochieng and **one LC3 Court** which sits at the Division. These Courts are duly constituted as provided for under the law.²²¹

Nabweru Division has 15 LC1 Courts (Cells/villages) to wit; Kawempe A, Kawempe B, Maganjo A, Maganjo B, TTula, Jinja Kaloli, Katooke A, Katooke B, Kisimu, Wamala, Nkokonjeru, Kawanda Central, Kirinyabigo, Kaayi and Nakyesanja, , 5 LCII Courts (Wards) to wit; ,Maganjo A, Maganjo B, Kawanda, Wamala and Nakyesanja and the LC3 court is not existed. It is only the LCI and II Courts which are duly constituted in accordance with the law and operational.²²²

Gombe Division has 53 LCI Courts (Cells/ villages to wit; Buwambo T.C, Kanywamusolo, Wabitembe, Kigoogwa, Kakerenge, Namakonkome, Lwesuulo, Bibbo, Kiryamuli, Kibungo, Kigoogwa, Kiryoogwa, Kingidde, Migadde, Nabinaka, Bujjumba, Ssenga , Kitanda, Kiteredde, Kaaso, Busikiiri, Ssaayi, Wambaale, Lulagala, Kavule, Ggalamba, Busonko, Busakya, Jjagala, Mwererwe A, Mwererwe B,

²²¹ Source: Nansana Division Office – Office of the Assistant Town Clerk.

²²² Ibid.

Nkene/ Kaddedde, Mbugu, Gombe, Kitungwa, Najjeza, Buwuzuume, Bubbaale, Buwonzi, Ssanga, Bugulube, Nkoma, Nakukuba, Nasse, Bukiika, Kasalrwe, Katalemwa, Kiryagonja, Kirwanira, Lwadda A, Lwadda B, Kito and Mabanda, **II LCII's** (Wards) to wit; Buwambo, Kiryamuli, Migadde, Ttikalu, Wambaale, Kavule, Mwererwe, Gombe, Ssanga, Nasse, Matugga and one LCIII Court which sits at the Division. These Courts are duly constituted as provided for under the law.²²³

Busukuma Division has **39 LCI Courts** (Cells/ Villages to wit; Nabutiti Kyambogo, Magigyee Luguddo, Kiremezi Buwanuka, Kizawula Bukemba, Buwagga, Kijudde, LCIII Magigyee, Luwunga, Butera, Bulyankuyege, Kibibi Wamirongo, Kabonge Zinzi, Menvu Lutete, Kabonge Buyaga, Nakakololo, Banda, Lugo, Kasozi, LC Lugo, Bulesa, Mairye, Ntinda Mairye, Sitabaale, Guluddene, LCII Guluddene, Kikoko, Namulonge QTRS, Kasambya, Nakyeesasa, LCII Kikoko, Buso, Namawata, Kakumba, Kabwama, Nkolempomye, Busukuma, Maggamba, Seeta, Namulonge, LCII Busukuma, Balitta, Kasana, Kiwenda and Nabitale LCII Kiwenda, 8 LCII's (Wards) are Magigyee, Wamirongo, Lugo, Guluddene, Kikoko, Kibumba, Busukuma and Kiwenda and one LCIII Court which sits at the Division. These Courts are duly constituted and operational as provided for under the law.²²⁴

From the above findings, it was established that Nansana Municipality has a total of 130 LC1 Courts (Cells/ villages, 30 LCII Courts (Wards) and 3 LCIII Courts all duly constituted in accordance with the law save for the LCIII Court of Nabweru which is not functional. However due to time and financial constraints three LC Courts were randomly selected from each Division of Nansana Municipality namely; **Nansana Municipality**; LCI Nabweru South I, LCII Nabweru South, LC3 (Nansana Division); **Nabweru Division**, LCI Ttula, LCII Maganjo A, LCIII (Nabweru Division); **Gombe Division**; LCI Gombe, LCII Gombe and LCIII (Gombe Division) and **Busukuma Division**, LCI Busukuma, LCII Busukuma and LCIII (Busukuma Division). These LC Courts were selected due to their location and population of the people within that jurisdiction.

²²³ Source: Gombe Division Office – Office of the Assistant Town Clerk.

²²⁴ Source: Busukuma Division Office – Office of the Town Agent.

Table 4. 1: Selected LCCs

Division	Selected courts and No. of Respondents						No. of Respondents	Percentage %
	LCI	No.	LCII	No.	LCIII	No.		
Nansana	Nabweru South I	20	Nabweru South	20	Nansana Division	10	50	25
Nabweru	Ttula	20	Maganjo A	20	Nabweru Division	10	50	25
Gombe	Gombe	20	Gombe	20	Gombe Division	10	50	25
Busukuma	Busukuma	20	Busukuma	20	Busukuma Division	10	50	25
Total		80		80		40	200	100

Source: Primary data

The Findings in table 4.1 above; indicates that in Nansana Division , Nabweru South I LCI Court, Nabweru South LCII and Nansana Division (LCIII) Courts were selected for the study. In Nabweru Division Ttula LCI and Manganjo LCII, Nabweru Division (LCIII) Courts were selected. In Gombe Division Gombe LC1, Gombe LCII and Gombe Division (LCIII) Courts were also selected and in Busukuma Division, Busukuma LCI, Busukuma LCII and Busukuma Division (LCIII) Courts were elected for the study. The findings also show that 20 Respondents were selected for each LCI and LCII of each division and a total of 10 Respondents selected from each LCIII Court. These Courts were selected due to their village-urban settings/location.

Purposive and random sampling were used to select the Respondents from each of the selected LCI, LCII and LCIII Courts in all the four Divisions. The Respondents from these divisions included, the members of these courts, Assistant Town Clerks who sit on the LCIII as secretaries, Police officers from the respective police stations, members of these cells and wards who have had cases in these courts and both youth and elderly and all the respondents were screened to show their knowledge on the existence and effectiveness of these LCCs in administration of justice. This was a principally considered a leading question as to whether one would be in position to undertake the interview or not and depending on the response and the following were the findings: -

Table 4. 2: Knowledge on the existence and efficacy of LCCs on Administration of Justice

Division	LCI		LCII		LCIII		Respondents per division	Percentage (%)
	Male	Female	Male	Female	Male	Female		
Nansana	8	12	9	11	6	4	50	25
Nabweru	11	9	13	7	8	2	50	25
Gombe	12	8	10	10	7	3	50	25
Busukuma	13	7	9	11	7	3	50	25
Total	44	36	41	39	28	12		
TOTAL	80		80		40		200	100

Source: Primary Data

The findings from the above Table 4.2 indicates that; a total of 50 Respondents were selected from each of the four Divisions, Nansana, Nabweru, Gombe and Busukuma making a total of 200 Respondents. 20 Respondents were selected from each of the selected LCI and LCII Courts of each Division, and 10 Respondents from each of the LCIII Court. The Respondents from the selected Local Council councils included both males and Females. Majority of the Respondents from the selected LC Courts were males. The difference is attributed to more male being actively involved in LCCs matters than their female counterparts in Nansana Municipality. The randomly and purposively selected 200 respondents had knowledge on the existence and effectiveness of the LCCs in their respective Divisions and this was a screening question for all the Respondents to determine their participation in this study.

Some of respondents had this to say during the interview as to their knowledge on the existence of LCCs in their respective villages and wards;

“.....the last year July 2018 elections of the LC Courts made these court popular among us and all people in this village know that in case you have an issue whether family or something else , you first go the LC1 (Nabweru south 1) and report the matter to the chairman.....”²²⁵

The Town Agent of Busukuma Division had this to comment during the interview; *“....these LCCs are rooted in villages, people know them since their local council leaders always run to their rescue in case*

²²⁵ Ms. Nabisere Maria a 31 year old female respondent from Nansana Division- Nabweru south LC1, in an interview carried out on 28th August 2019.

of a problem ... and the recent July 2018 elections revived them and made them more popular among the people.....”²²⁶

“..... after the elections of the LCI and LCII’s leaders last year in 2018, they organized village and parishes meetings, introduced themselves to us and told us what they were supposed to do and also told us to elected the other member of the Court...so we know these courts exist although I have not had any matter before them.....”²²⁷

“.....the people know that these LCCs exist in their areas because when they come with complaints or cases to report they tell us how the chairpersons of these courts have sent them here.. and some come with reference letters from these courts....”²²⁸

4.3 Background Characteristics of the Respondents

The study determined the personal information of the respondents in terms of gender (as indicated above), age, religion, level of education, marital status, and the occupation of the residents of Nansana Municipality in Wakiso District. From the Findings in table 4.2 above, majority of the Respondents from the selected LC Courts are males. The difference is attributed to more male being actively involved in LCCs matters than their female counterparts in Nansana Municipality.

²²⁶ Mr. Joseph Kajumba a town agent of Busukuma Division in an interview carried out on 30th August 2019.

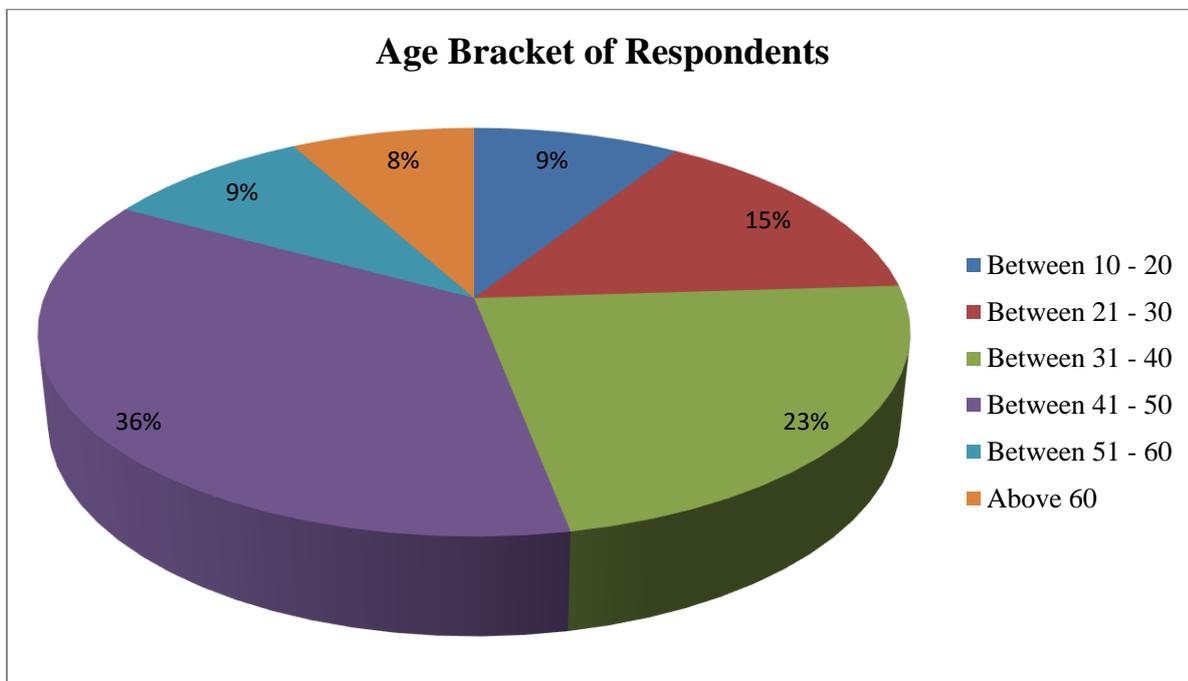
²²⁷ Fatuma 20 years old, a resident of Gombe LC11 in an interview conducted on 30th day of August 2019.

²²⁸ Office in Charge, Busukuma police station in an interview conducted on the 30th day of August 2019. Use the same fond and format throughout.

4.4 Age of Respondents

The Respondents were asked to specify their age during the data collection and the findings are summarized in the pie chart as seen below: -

Figure 4.5: Age Bracket of Respondents



Source: Primary Data

From the findings in Figure 4.5 above; majority of the respondents (36%) were aged between 41 and 50 years, 23% of the respondents were aged between 31 and 40 years, 15% were aged between 21 and 30 years, 9% were between 51 and 60 years and between 10 and 20 years and the remaining 8% were aged between 10 and 20 years. This shows that Nansana Municipality is inhabited with individuals of various age brackets though the youths aged between 31 and 50 years are the majority.

4.6 Religion of Respondents

The Respondents during the interviews were tasked to state their religion and the findings are illustrated hereunder;

Table 4. 7: Religion of the Respondents per Division

Religion	Divisions				No. of Respondents	Percentages %
	Nansana	Nabweru	Gombe	Busukuma		
Christianity	19	14	16	21	70	35
Islam	31	36	34	29	130	65
Others	0	0	0	0	0	0
Total	50	50	50	50	200	100

Source: Primary Data

Basing on the findings in Table 4.7 above, 35% of the Respondents profess the Christian faith, 65% belonged to the Islam religion and none belonged to other religions. From the findings the majority of the Respondents were Moslems.

4.8 Level of Education

During the research, the respondents were also tasked to state their levels of education for purposes of establishing the best mode of communication with them and use of these courts.

Table 4. 9: Level of Education of Respondents

Level of Education	Divisions				No. of Respondents	Percentages %
	Nansana	Nabweru	Gombe	Busukuma		
University	16	18	13	11	58	29
Tertiary	8	9	15	19	51	25.5
Secondary	13	10	11	12	46	23
Primary	9	7	8	5	29	14.5
Others	4	6	3	3	16	8
Total	50	50	50	50	200	100

Source: Primary Data

Basing on the findings in the above table 4.9; most of the Respondents in this study had attained some form of formal education. The majority of the Respondents 29% were university graduates, 25.5% of the Respondents had attained Tertiary education, 23% of the Respondents had attained Secondary Education, 14.5% of the Respondents had obtained primary education and some still continuing and only 8% of the Respondents had not attained / attended to any form of formal education.

4.10 Marital Status

The Respondents were further tasked to state their marital status as that would help partially in determining the nature of disputes handled in these LCCs and the frequent users of the same and also in the groupings for FGDs and the findings were as follows.

Table 4.11: Marital Status of the Respondents

Religion	Divisions				No. of Respondents	Percentages %
	Nansana	Nabweru	Gombe	Busukuma		
Married	28	22	29	21	90	45
Divorced/Separated	5	19	4	5	33	16.5
Widowed	4	3	5	10	22	11
Single	13	16	12	14	55	27.5
Total	50	50	50	50	200	100

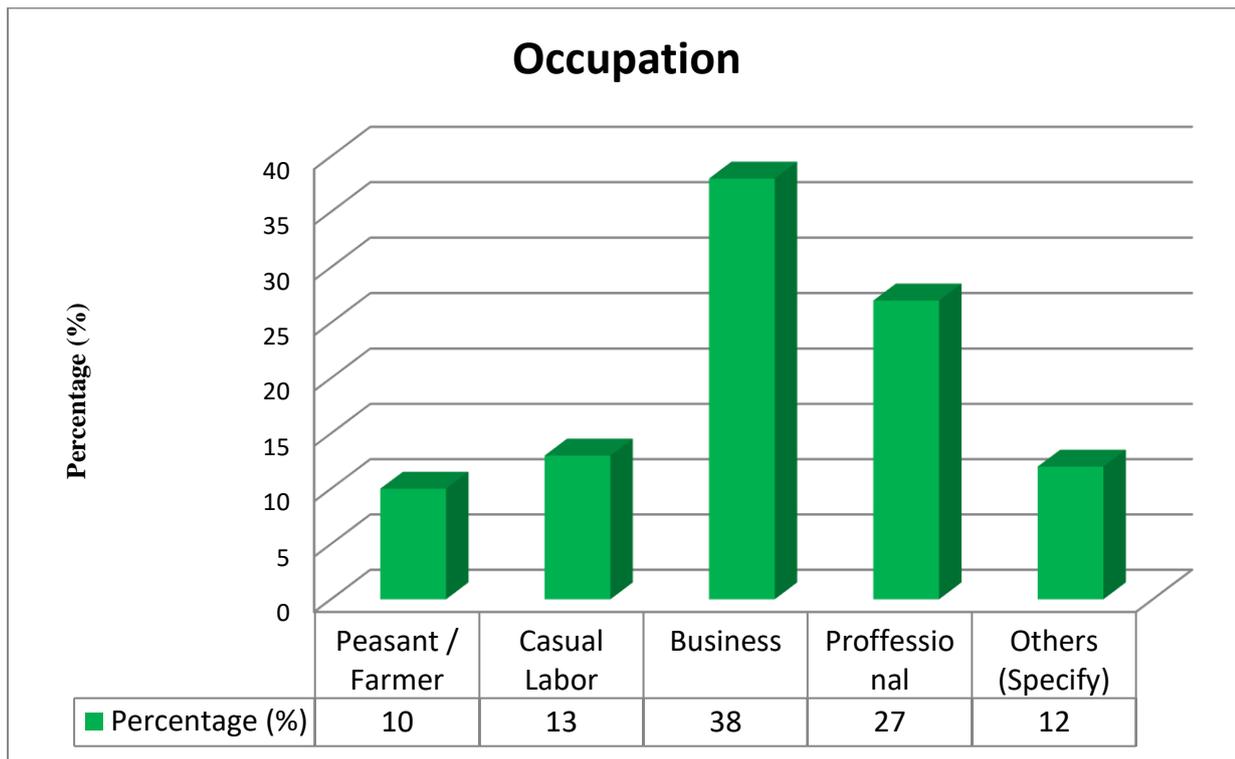
Source: Primary Data

Findings in the Table 4.11 above indicates that; the majority of the Respondents 45% were married. 16.5% of the Respondents were divorced/ separated, 11/% of the Respondents were widowed while 27.5% of the Respondents were single. Though there was a fair distribution in the marital status of the Respondents in this study. This is a clear indication of a fair response distribution which minimizes chances of biasness in any study.

4.12 Occupation

The Respondents were also tasked to state their occupation during the interviews and the findings were as follows.

Figure 4. 13: Occupation of the Respondents



Source: Primary Data

The findings in the bar graph 4.13 above; shows that the majority of the respondents (38%) were individuals involved in business activities in Nansana Municipality, 27% of the respondents were professionals providing various services within the municipality, 13% of the respondents were casual laborers and 10% were farmers, and 12% of the respondents were not engaged in any of the specified forms of engagement of whom some were dependents. The commonest businesses stated were, Boda boda riding; shop retailing, hairdressing, and tailoring. This shows that the municipality is a residence of individuals involved in all sectors of service delivery and businesses.

4.14: Understanding the Legal Framework of LCCs in Uganda

The Respondents were asked various questions on their knowledge concerning the legal framework of LCCs in Nansana Municipality which findings can form a generalized basis upon which these courts are understood across Uganda and especially in Nansana Municipality. Findings from these questions include the following:

Table 4.15: Knowledge of the Respondents on legal framework of LCCs

Response	Division				No. of Respondents	Percentage %
	Nansana	Nabweru	Gombe	Busukuma		
Yes	48	47	46	46	187	93.5
No	2	3	4	4	13	6.5
Total	50	50	50	50	200	100

From the above findings; it was established that in much as all the 200 respondents were aware of the existence of the LCCs in their respective divisions and villages; 93.5% of the Respondents had knowledge on the laws / legal framework governing these courts and 6.5% had no knowledge on the legal framework or laws governing the existence of these LCCs. Nabweru and Nansana had majority of the Respondents with knowledge of the laws governing the existence of these Courts. The biggest percentage of the Respondents in Nabweru and Nansana was attributed to their urban status since they were more centrally located than Gombe and Busukuma.

This clearly indicates that the role of these LCCs is pertinent in resolving village conflicts that fall within their mandate. However, much more efforts are required by the government and particularly the Ministry of Local Government to promote sanitization of the entire citizenry on the law, mandate / jurisdiction of LCCs in conflict resolution.

On the legal framework of the LCCs, the Respondents had this to say;

*“.....These LCCs are established under the 1995 Constitution of Republic of Uganda, Local Government Act and the LCCs Act among others, it’s under laws that they derive their mandate.....”*²²⁹

²²⁹ Mr. Kavuma Musa, Assistant Town Clerk, Gombe Division (Secretary to the LCCIII) in an interview conducted on 30th August 2019.

The Chairperson LCI Ttula stated that;

“.....these courts are regulated by the law, for example the LCCs Act which provides for their composition and jurisdiction.....”²³⁰

“I know that there are laws regulating and governing these LC Courts on how they are they supposed to operate and handle our disputes for example the Constitution of Uganda.....”²³¹

“.....i know that we have LC Courts in my village Gombe Ward, but I don’t know of any laws about them, I only know that they were put in place by the Government of Uganda to help us with our small disputes in the community.....”²³²

The findings indicated that majority of the Respondent had knowledge that these LC Courts are established and regulated by law irrespective of the 6.5% which had no idea that these laws existed. Therefore this an indicator that more sensitization is needed by the government if these courts are to be effective in executing their mandate.

The Respondents were tasked with a question as to whether the current laws are relevant in empowering the LCCs to adjudicate on various matters appropriately and the responses were as hereunder; this question was answered by the 187 Respondents (above) who had knowledge of laws of governing these LCCs.

Table 4. 16: Relevance of current LCCs laws in adjudication of disputes

Response	Division				No. of Respondents	Percentage %
	Nansana	Nabweru	Gombe	Busukuma		
Yes	47	45	45	44	181	96.8
No	1	2	1	2	6	3.2
Total	48	47	46	46	187	100

²³⁰ Mr. Senkima Joseph, Chairperson LC1 Ttula, Nabweru Division) in an interview conducted on 29th August 2019.

²³¹ Ms. Nantume Aida, a resident of Busukuma LCII ward, Busukuma Division in an interview conducted on 30th August 2019.

²³² Mr. Mpiima Charles, a resident of Gombe Ward (LCII Court) in an interview conducted on the 30th August 2019.

Source: Primary Data

Findings in Table 4.7 above shows that the majority of the 187 respondents who knew about the existence of the laws governing these courts, 96.8% stressed that the current laws are relevant in empowering the LCCs to adjudicate on various matters in an acceptable or satisfactory manner and only 3.2% of the respondents said that the current laws were not relevant in empowering the courts to carry out their functions properly in administration of justice. This is an indicator that the Government still has a role with regard to sensitization to play.

Findings also indicated that the current legal framework among which include among them the 1995 Constitution of the Republic of Uganda and the LCCA, 2006 and Regulations thereunder are relevant in empowering the LCCs to adjudicate on various matters in an acceptable or satisfactory manner. The findings further showed that they acknowledged the role played by the LCCs in adjudication of matters before them as satisfactory save for the few challenges cited.

The respondents interviewed had this to say;

“..... the laws governing the operation of these courts to wit; the 1995 Constitution of Republic of Uganda, the Local Government Act, and the Local Council Courts Act and Regulations thereunder are relevant; they are a foundation of these court, they provide for their powers, jurisdiction, composition and other incidental things.....”²³³

“.....without these laws to regulate the powers and jurisdiction of these LC Courts, their operations would total be chaos and no justice would be achieved....so these laws are very relevant though more is needed to cab down the challenges like corruption.....”²³⁴

4.17 The role played by the LCCs in the administration of justice at the lower level

All the 200 Respondents were further questioned on how they rate the role played by the Local Council Courts in adjudicating on the various matters / cases that lie before them and the responses were as hereunder.

²³³ Mr. Senoga Ahmed, The Assistant Town Clerk of Nansana Division (Secretary LCIII Courts) in an interview conducted on the 28th day of August 2019.

²³⁴ Ms. Magala Anne, a resident of Busukuma ward (LC11) in an interview conducted on the 30th day of August 2019.

Table 4. 18: Rating the role played by the LCCs in adjudicating on the various matters / cases they entertain

Response	Division				No. of Respondents	Percentage %
	Nansana	Nabweru	Gombe	Busukuma		
Poor	3	2	2	1	8	4
Fair	8	9	10	9	36	18
Not decided	2	1	1	2	6	3
Good	15	19	17	18	69	34.5
Better	16	15	14	15	60	30
Best	6	4	6	5	21	10.5
Total	50	50	50	50	200	100

Source: Primary Data

Basing on the findings in Table 4.18 above; the majority of the respondents (34.5%) acknowledged that the role played by the LCCs in adjudication of matters before them was good, 30% said that the role played was better, 18% of the respondents said that the role was fair, 3% of the respondents were not decided, 10.5% of the respondents said it was best, and 4% of the respondents said that it was poor.

These findings indicate that in as much as some of the respondents were not contented by the role played by the LCCs in adjudication of various matters / cases that lie before them, a significant number of the respondents were contented and rated the role in a positive manner (34.5% = good, 30% = better and 10.5% = best) meaning that this role is recognizable and recommendable.

Some of the respondents had this to say during the interview on the role or effectiveness of LCCs in adjudication of disputes;

“..... These LCC are doing a recommendable job, to wit they have handled most of the disputes between residents like rent defaults and minor bibanja/land wrangles which would have cause more back log in the formal courts.....”²³⁵

“.....these LC Courts are good, they handle our problems and give us remedies without going to formal courts where matters take a long time to be decided.....in February this year I had a dispute with my neighbor whom I had lent 200,000/= and she had refused to give it back so I went the LCI Court Gombe wherein she was ordered to pay me my money, which she did pay in April this year.....”²³⁶

“.....I don’t believe in the LC Courts they don’t work.....I had a kibanja dispute with my neighbor (a rich man) I went to the LCIII Court of Nansana at the division but they sent me back to the LCII Court of Nabweru South in 2017, where I went and reported my case; it took them (LCII Court) over a year without summoning this rich man until I decided to go and report my matter in the chief Magistrate Court of Nabweru where it is pending since January this year.....”²³⁷

Table 4. 13: Whether the LCCs in Nansana Municipality follow the prescribed procedures during their sittings

Response	Division				No. of Respondents	Percentage %
	Nansana	Nabweru	Gombe	Busukuma		
Yes	42	46	42	44	176	88
No	8	4	8	6	24	12
Total	50	50	50	50	200	100

Source: Primary Data

Findings in Table 4.19 above show, that the majority of the respondents (88%) stated that the LCCs in Nansana Municipality follow the prescribed procedures during their sittings, while 12% of the respondents disagreed. This means that save for a few LCs, majority of the LCs in Nansana Municipality

²³⁵ Mr. Sulaiman Mosoke, the Town clerk of Nabweru Division in an interview conducted on the 29th day of August 2019.

²³⁶ Ms. Nakimuli Teddy a resident of Gombe village (LC1) in Gombe Division in an interview carried out on the 30th day of August 2019.

²³⁷ Mr. Segawa Farouk a resident of Nabweru South Ward, Nansana Division in an interview conducted on the 28th day of August 2019.

adhere to the laid down procedures and laws while adjudicating matters and conducting formal meetings. Part II of the LCCA, 2006 prescribes the manner in which LCCs are established and composed; while Part II of the LCCA, 2006 provides for the operation of LCCs. It is important to note that adherence to the prescribed laws renders these courts trusted by the litigants and their decisions legally binding.

These are some of the responses from the respondents;

“.....these courts are operated in accordance with the stipulated procedures for example when a matter is reported we record the case and summon the defendant / Respondent where after a matter is heard and determined inter-parties save for where one fails to appear when summoned.....”²³⁸

“.....we follow the stipulated procedures while conducting proceedings, when a case is reported, it is recorded in the case book, given a number and file and then we thereafter summon the Respondent to answer to the allegations against him....we give all parties a chance to present their cases and call witnesses during the proceedings among others...”²³⁹

“.....these courts do not follow all the prescribed procedures as supposed to, in August 2018 my issue for recovery of money under a contract was heard and determined against me in Busukuma LCI Court so I appealed to the LCII Court of Busukuma and while there I was asked for a record of proceedings from the LCI court but on going there I was told that they don't have it which complicated my case and I had to report the same to the Chief Magistrate Court of Kasangati...”²⁴⁰

4.20 The Factors Responsible for Promoting and Hindering LCCs in Justice Administration

Various questions were put forward to the respondents concerning the factors responsible for promoting and hindering LCCs in their quest to administer justice to the residents of Nansana Municipality. The findings on the several questions are presented below: -

²³⁸ Ms. Nabwami Hadija, LCII Chairperson Maganjo A ward (LCII) Nabweru Division, in an interview conducted on the 29th day of August 2019.

²³⁹ Mr. Sekabira Herbert, Vice Chairperson, Nabweru South Ward (LCII Court) in Nansana Municipality in an interview. conducted on the 28th day of August 2019.

²⁴⁰ M.s Namusisi Barbra a resident of Busukama village, Busukuma Division conducted on the 30th day of August 2019.

Table 4. 21: Factors responsible for promoting LCCs in justice administration

Factors responsible for promoting	Divisions				No of Respondents	Percentage
	Nansana	Nabweru	Gombe	Busukuma		
Cost effective	50	50	50	50	200	100
Accessibility /Flexibility	50	50	50	50	200	100
Speedy judgments	50	50	50	50	200	100
mediation and reconciliation	50	50	50	50	200	100

Source: Primary data

In table 4.21 above, all the 200 respondents interviewed in all the four divisions of Nansana Municipality stated that the factors responsible for promoting the LCC's in the administration of justice were; cost effectiveness of the courts, accessibility of these courts , speedy judgments delivered and the promotion of mediation and reconciliation by these courts. The Respondents had this to comment;

“.....these LCCs are located within the community, with each village and ward having a court thus making them popular among the people and because of that people have access to them at reasonable days and time.....”²⁴¹

“.....these LC Courts are good, they handle our problems and give us remedies without going to formal courts where matters take a long time to be decided.....in February this year I had a dispute with my neighbor whom I had borrowed 200,000/= and she had refused to give it back so I went the LCI Court Gombe wherein she was ordered to pay me my money, which she did pay in April this year.....it takes a short time to get the judgment...”²⁴²

“.....these LCCs are cost effective, the fees payable while filing a complaint are little compared to the formal courts, where you pay high filing fees and then the lawyers' fees...I had a matter before the LCI Court of Ttula and at the conclusion of it I had paid only 40,000/= inclusive of everything which can never be the case with formal courts.....”²⁴³

²⁴¹ Mr. Sulaiman Musoke, Town Clerk, Nabweru Division in an interview conducted on the 29th August 2019.

²⁴² Ms. Nakimuli Teddy a resident of Gombe village (LC1) in Gombe Division in an interview carried out on the 30th day of August 2019.

²⁴³ Mr. Mpanga, a resident of Ttula village (LC1) Nabweru Division in an interview conducted on the 29th August 2019.

The 200 Respondents response is as hereunder;

Table 4.22: On the factors hindering the LCC's on the administration of justice

Factors responsible for hindering	Divisions				No of Respondents	Percent age %
	Nansana	Nabweru	Gombe	Busukuma		
Lack of skills and capacity by members	5	6	6	6	23	11.5
Lack of Privacy and confidentiality	3	2	3	2	10	5
Charging of exorbitant fees	7	8	7	6	28	14
Unfair/biased Judgment	7	6	5	6	24	12
Poor record keeping	4	5	4	5	18	9
Failure to follow the stipulated procedures	5	4	5	6	20	10
Exercise of excessive jurisdiction	5	6	5	5	21	10.5
Corruption	5	5	6	5	21	10.5
Lack of office stationary	4	2	3	3	12	6
Lack of facilitation /salaries for the LCC members	5	6	6	6	23	11.5
Total	50	50	50	50	200	100

Source: Primary data

From the findings in the above table 4.22, it was established that factors hindering the LCCs in the administration of justice are; charging of exorbitant fees 14%, unfair/biased Judgment 12%, lack of facilitation /salaries for the LCC members 11.5%, lack of skills and capacity by members 11.5%, corruption 10.5%, exercise of excessive jurisdiction 10.5%, failure to follow the stipulated procedures 10%, poor record keeping 9%, lack of office stationary 6% and lack of Privacy and confidentiality 5% due to the fact that these cases are adjudicated within the community which exposes individuals

characters to the rest of the members of the community putting their lives at a risk. These factors have greatly affected the performance of these Courts in the adjudication of disputes and a lot needs to be done to curb them down.

The Respondents stated as follows;

“.....the 25% fund (roughly UGX 300,000/=) given to these courts by the division for each quota of the financial year is so little to facilitate these courts for their meetings and stationary, in turn we charge more fees on the filing depending on the subject matter than the ones provided by the law to facilitate their smooth running.....”²⁴⁴

“.....due to lack of facilitation and salaries for the members of these courts, the members of the courts have in turn connived with the litigants to pass judgments in their favour in exchange for a bribe....which has greatly affected justice delivery in these courts.....”²⁴⁵

“..... We as members of these courts are not paid any salary or facilitation and yet we invest the little money we get from businesses in the courts like buying pens, files and papers, in turn this demotivates us which also affects the process of justice delivery in these courts.....”²⁴⁶

“.....among the issues we handle here in our LCI Court are land matters and they are the commonest since more of the land here is mailo, so we get more cases of trespass.....”²⁴⁷

“.....These courts do not follow all the prescribed procedures as supposed to, in August 2018 my issue for recovery of money under a contract was heard and determined against me in Busukuma LCI Court so I appealed to the LCII Court of Busukuma and while there (LCII) I was asked for a record of proceedings from the LCI court but on going there I was told that they don't have it which complicated my case and I had to report the same to the Chief Magistrate Court of Kasangati...”²⁴⁸

In the case of *Olebo Samwiri Vs Alegete Rose, HC Civil Application No. 0028/2003*, Lady Justice F. Mwendha observed that the complainant in L.C I court of Morutemel should institute fresh pleadings in

²⁴⁴ A member of a Court in Gombe Division (preferred enormity) on this point in an interview conducted on the 30th day of August 2019.

²⁴⁵ Mr. Kitenda Richard, the Chairperson of LCII Court Busukuma ward in an interview conducted on the 30th day of August 2019.

²⁴⁶ Secretary for information, Nabweru South 1 (LCI Court), in an interview conducted on 29th day of August 2019.

²⁴⁷ Mr. Kamyia Haruna, Chairperson, Gombe LC1 Court , Gombe Division in an interview conducted on the 30th day of August 2019.

²⁴⁸ Ms. Namusisi Barbra a resident of Busukuma village, Busukuma Division conducted on the 30th day of August 2019.

the appropriate Magistrate Grade I court and this was due to lack to proper record of proceedings and quorum.

Further in the case of *Kintu Tom Versus Nsubuga Arajabu HC Civil Revision No. 014 of 2016 (Arising from Kamuli Namwenda LCII Court Judgment Dated 23/09/2012)*, Lady Justice Eva K. Luswata observed that;

“....According to the proceedings of 23/9/12, a total of six men sat to hear and decide the dispute. The judgment was signed by the Chairperson LCII. There was no female representative and thus the Court had no quorum. The proceedings would thus be irregular and the decision illegal for lack of quorum. Although the proceedings for the LCI Court were not attached for scrutiny of this objection, I have already made the decision that the LCI Court had no jurisdiction to hear the dispute as the Court of first instance...”

“.....we have a problem of stationary like, computers to type the proceedings and judgments, papers, files and other materials, without these materials it makes our work impossible and in the end it affects justice delivery in these courts....”²⁴⁹

“.....some LCCs litigants especially those with cases on criminal trespass and assault are sent here so that investigations can be commenced and for the matters to be referred to formal Courts after the refusal of some litigants to comply with the decisions of those LC Courts....”²⁵⁰

4.23: Understanding the Effectiveness of the Legal Framework on LCCs in Uganda

In Uganda, the LCCs are operationalized basing on the existing legal framework and this premised the researcher to determine the effectiveness of the legal framework. The findings from the 187 respondents who knew about the relevancy and existence of the laws governing the LCC’s undertook these questions and the findings were as follows; -

²⁴⁹ Mr. Sekabira Herbert, Vice chairperson LCII Court Nabweru South Ward in an interview conducted on the 29th day of August 2019.

²⁵⁰ Officer In charge, Nabweru Police station in an interview conducted on the 29th day of August 2019.

Table 4.24: Whether the current laws governing the LCCs are effective in promoting justice administration

Response	Division				No. of Respondents	Percentage %
	Nansana	Nabweru	Gombe	Busukuma		
Yes	20	18	17	21	76	40.6
No	28	29	29	25	111	59.4
Total	48	47	46	46	187	100

Source: Primary Data

From the above findings, 59.4% of the 187 Respondents stated that the current laws governing the LCC's are not effective in promoting justice and 40.6% of the Respondents stated that these laws are effective. That they are not effective based on the number of hindrances encountered by these courts in the administration of justice.

Some of the Respondents commented as follows

*".....the laws on the operation of LCCs are not effective, especially on the part of enforcement of their judgments.....corruption is also at the peak in these courts more still needs to be done if they are to live to their mandate of administering justice at the local level...."*²⁵¹

4.23 Matters handled and types of remedies granted by the LCCs in Nansana Municipality

The researcher sought to understand the type of cases handled by the various LCCs within Nansana Municipality during the face to face interviews and focus group discussions and the findings are as hereunder;

Table 4. 4: Cases/Disputes handled in the LC Courts in Nansana Municipality

Cases /Disputes handled	Courts			No. of Respondents	Percentage %
	LCI	LCII	LCIII		
Bibanja/land wrangles	20	22	16	58	29

²⁵¹ Dr. Nalujja , a member of the LCIII Court , Nansana Division in an interview conducted on the 28th day of August 2019

Rent defaulters	16	12	6	34	17
Family issues	14	19	4	37	18.5
Enforcement of contracts	12	10	7	29	14.5
Petty thefts	11	9	3	23	11.5
Assaults /fights	7	8	4	19	9.5
Total	80	80	40	200	100

Source: Primary Data

From the findings in the table 4.23 above; the most handled dispute is land wrangles 29%, family issues 18.5%, rent defaulters 17%, enforcement of contracts 14.5%, Petty thefts 11.5% and assaults/fights 9.5%. Land wrangles being the most handled dispute is due to the land tenure in Nansana Municipality commonly being mailo land.

The Assistant Town Clerk of Nansana Division (Secretary to the LCIII Court Nansana Division had this to say;

“.....Basically in Nansana Division most of the cases we receive on appeal, are land/bibanja issues and this because the land tenure system in Nansana Division and the other Divisions of Nansana Municipality is mailo.....”²⁵²

Table 4. 5: Remedies awarded in the LC Courts in Nansana Municipality

Cases /Disputes handled	Court			No. of Respondents	Percentage %
	LCI	LCII	LCIII		
Fines	14	13	9	36	18
Restitution	15	17	3	35	17.5
Compensation	13	8	5	26	13
Reconciliation	12	16	10	38	19
Community service	9	7	5	21	10.5
Apology	11	14	8	33	16.5

²⁵² Mr. Senoga Ahmed, in an interview conducted on the 28th day of August 2019 at Nansana Division.

Canes	6	5	0	11	5.5
Total	80	80	40	200	100

Source: Primary Data

From the above findings, the most awarded remedy to the successful litigant in these LCCs is reconciliation 19%, fines 18%, Restitution 17.5%, apology 16.5%, compensation 13%, community service 10.5%, and canes 5%. Reconciliation is the most awarded remedy due to the fact that these courts are aimed at reconciliation.

All the LCCs members interviewed stated that most of the remedies awarded by the Courts are intended to promote reconciliation and mediation among the community members.

“.....most of the remedies are award these LC Courts are intended to promote reconciliation between the litigants so as to have a harmonized community without any bad blood...”²⁵³

4.25 Recommendations

The respondents were tasked with answering whether the LC Courts need improvement if they were live up-to their mandate of administering justice at the lower level. The responses were as hereunder;

Table 4. 6: Whether the LCCs need improvement to foster their role in justice administration

Response	Division				No. of Respondents	Percentage %
	Nansana	Nabweru	Gombe	Busukuma		
Yes	49	50	50	50	199	99.5
No	1	0	0	0	1	0.5
Total	50	50	50	50	200	100

Source: Primary Data

Basing on the findings in Table 4.25 above, majority of the respondents (99.5%) agreed that the LCCs need improvement to foster their role in Justice Administration, while 0.5% did not agree. The

²⁵³ Mr. Kavuma Musa, Assistant Town Clerk (Secretary LCIII Court) Gombe Division in an interview conducted on the 30th day of August 2019 at the Division headquarters.

Respondents in stating that the LC Courts need improvement and cited various areas of improvement. ; facilitation of the members of the court to curb down corruption,, setting up designated places for adjudication of cases since the courts especially the LCI and LCII sit at the chairpersons' place of residence which is not the most convenient place. Sensitization of the LC Court member to make them familiar with the laws and procedures to be followed in these Courts, the laws should be amended to mandatorily include a paralegal in the composition of the LC Courts to help in guidance and observance of the laws and all the matters that may require legal declarations, , and that there should be standardization and sensitization of the citizens on the fees and fines imposed under the law by the LCCs to avoid some LCCs charging illegal and exorbitant fees, among others.

CHAPTER FIVE

SUMMARY OF RESEARCH FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

This chapter presents the summary of findings presented in line with the overall objective of the study; “The overall objective of this study was to critically evaluate the efficacy of LCCs in administration of justice in Uganda in Nansana Municipality – Wakiso District”. Summaries of the findings are presented for each of the specific aims of the study namely: - to find out factors responsible for promoting and hindering LCCs from administering justice in Nansana Municipality and to make recommendations for effectiveness of LCCs in administering justice in Nansana Municipality and Uganda at large.

The study findings revealed that in all the village and wards of Nansana Municipality, LCCs were found to be in operation although some were more active than others. That due to the recently July 2018 elections, these LCCs were duly constituted in accordance with the law save for the Nabweru LCIII Court which is neither operational nor constituted. Therefore, with the complete structure in place, it is expected that the performance of the LCCs shall greatly improve. It should however be noted that the members of the LCCs I and II need capacity building to enable them appreciate the principles of justice delivery.

5.2 Effectiveness of the Legal Framework of LCCs in Uganda

The findings also indicated that the current legal framework among which include; the 1995 Constitution of the Republic of Uganda, the Local Government Act and the Local Council Courts Act, 2006 and the Regulations thereunder are relevant and adequate in empowering the LCCs to adjudicate on various matters in a lawful, acceptable or satisfactory manner. However, the findings also indicate that these laws lack proper interpretation, application, implementation and supervision thus affecting the performance of these Courts.

The study findings revealed that most of the randomly and purposively selected respondents had knowledge about the existence of LC Courts and the laws regulating them due to July 2018 elections of the LCI and LCII Courts and sensitization by the local members/leaders through meetings and announcements. This clearly indicates that the role of these LCCs is pertinent in resolving village conflicts that fall within their mandate. Therefore, much more efforts are required by the government and particularly the Ministry of Local Government to promote sensitization of the entire citizenry on the mandate / jurisdiction and laws governing these LC Courts.

The study findings revealed that some LCCs were operating from 2001- to July 2018 (the time of no validly elected LCCs leaders) and that judgments were passed and enforced.

“.....Our Courts of LC1 and LCII have been operating from the time I came to Ttula in 2006 up-to date and have been resolving disputes between the people.....I know this because I was a witness in a case in the LCII Court in 2009”²⁵⁴

The findings revealed that the delay in conducting the LCC I and II elections in Nansana Municipality and Uganda at large, despite the existence of the laws greatly affected the performance of these Courts since all the decisions passed by these Courts from the year 2001 (when the term of duly elected leader expired) to July 2018 (before the elections of members to these Courts) were declared null and void on the ground that these Courts were not duly constituted. In the case of *Ruranga Rubaramira v. Electoral Commission [2008] 1 EA 387*; the Constitutional Court declared that village, Parish and Ward LCCs constituted under the movement system of political dispensation that remained in existence following the enactment of the Constitution (Amendment) Act of 2005, are not validly constituted until new ones are elected in accordance with the multiparty system of political dispensation that was introduced by that amendment.

It is settled law that a judgment of a court without jurisdiction is a nullity and a person affected by it is entitled to have it set aside *ex debito judiciali* (See *Karoli Mubiru and 21 Others v. Edmond Kayiwa [1979] HCB 212*; *Peter Mugoya v. James Gidudu and another [1991] HCB 63*). Where a trial court has exercised a jurisdiction not vested in it, all subsequent proceedings lack the foundation and legitimacy and cannot stand on their own.

The study findings further revealed that after the declarations in the case of *Ruranga Rubaramira v. Electoral Commission [2008] 1 EA 387 (supra)*, The LCCs were challenged with cases, where they had to advise the litigants to re-file and or file their cases with the Chief Magistrate Courts in their jurisdictions for further action and management thereby delaying justice due to the and causing backlog in the Magistrate Courts.

“..... The decision in the case of *Ruranga Rubaramira* was a blow to the litigants who got to know about it since they could not enforce their obtained judgments and had to go through the litigation process again in the Magistrate courts....we had to advise the people to be filing their cases in the Magistrate Courts and that caused a delay in delivering justice due to the many cases pending in those Magistrate Courts.... You file a case and it takes years to be concluded..... Some people even died

²⁵⁴ Mr. Mpanga, a resident of Ttula village (LC1) Nabweru Division in an interview conducted on the 29th August 2019.

before their cases could be completed..... and yet in our LCCs cases could take a month or less.....the failure to conduct elections for the Local Council leaders really affected justice delivery ”²⁵⁵

The study findings revealed due to the knowledge gap among the members of these Courts, some LCCs were silently handling criminal cases such as defilement, rape, theft, burglary, fraud, assault, among others which are beyond their mandate and jurisdiction. However, majority of the LCCs were aware and never handled such criminal cases outside the LCCA but rather referred them to police for investigations and further action.

Findings revealed that most LCCs in Nansana Municipality fairly follow the stipulated procedures in the law during proceedings and in adjudication of matters before them, although sensitization is required for the members of these LCCs to bridge the knowledge gap for better justice delivery at the grass root and implementation of the existing laws.

5.3 The Factors Responsible for Promoting and Hindering LCCs in Justice Administration

The study findings indicate that various factors contribute to promotion of LCCs in their quest to administer justice in Nansana Municipality to wit;

The findings revealed that LCCs are located within the community with each village and ward having a court, popular among the people and because of that people have access to them at reasonable days and time.

That LCCs award remedies and judgments within the shortest time possible compared to the formal courts where judgments take years to be delivered to the detriment to the litigants.

That LCCs are cost effective, the fees payable while filing a complaint are little and affordable compared to the costs involved in formal courts.

That LCCs advocate for mediation and reconciliation among the aggrieved parties thereby ensuring peace and harmony in the society. Majority of the cases were being resolved through dialogue and the community members felt they were given chance to ask questions and seek clarifications.

²⁵⁵ Mr. Kavuma Musa, Assistant Town Clerk (Secretary LCIII Court) Gombe Division in an interview conducted on the 30th day of August 2019 at the Division headquarters.

The research findings further revealed that the LCCs do face various challenges in execution of their mandate of administering justice at the grass root which among others include;

Handlings matters beyond their legal jurisdiction especially LC1's handling land matters; it is now settled law that land matters under the LCCA are to be handled by the LCII as a court of first stance (*See Busingye Jamia v. Mwebaze Abdu and another* (supra)). Therefore these LCCs need to sensitized on this development in the law to ensure compliance and better service delivery to the litigants.

Charging of exorbitant fees to litigants who seek redress from these courts which at times affects the access to justice; The findings revealed that some of these courts charge high fees contrary to the provisions of the law and that this has deterred some aggrieved people/ litigants from accessing the guaranteed justice.

Biasness, corruption among others and they are used as vessels to solicit bribes from the parties who seek redress from them. These challenges need addressing if the LCC's are to live up-to their mandate of delivering justice at the grass root.

5.4 Recommendations

The study findings indicated that despite the advantages of the LCCs in administering justice at the grass root, improvement is needed to foster their role of administering justice at the grassroots and as a result the following recommendations were suggested.

On the issue of charging of exorbitant fees; it was recommended that the Ministry of justice and Constitutional Affairs together with its Partners should sensitize the general public and members of the courts the court fees payable for the various subject matters; through displayed the fees payable on the court notice board, doors/premises, judiciary website and issuance of brochures on the same to the general public.

That to bridge the knowledge gap of the LCCs officials; the Government through the line Ministry should ensure empowerment through training, capacity building and massive sensitization of the office bearers in the LCCs structures.

The Government through the line Ministry should ensure revision and simplification by translation into local languages of existing legislation and laws on the LCCs and their mandates so as to equip both the populace and the members of these courts with knowledge on the same and to curb the problem of lack of awareness of the provisions of the law and procedures.

The Government through the line Ministry should ensure monitoring of the LCCs to address and support their performance and to ensure that they are well composed to curb the problem of making some decisions/judgments without quorum.

The government through the line Ministry should increase the budget for LCCs to ensure fulfillment of their mandate and to curb bribery and corruption and lack of stationary in these courts.

In order to curb the problem of corruption and to ensure unbiased judgments; there was a call to Government through the line Ministry to introduce a reasonable monthly remuneration of the members of these courts.

The Government through the line Ministry should ensure that the existing laws on the LCCs are amended to mandatorily include a paralegal on the composition of these courts to help in guidance and observance of the laws and principles of natural justice.

5.5 Conclusions

The failure by the Government to conduct the LCCs elections from 2001 to July 2018 in Nansana Municipality and Uganda at large, greatly affected the performance of these Courts to wit; all the decisions made by these courts during that period were declared by the formal courts on appeal to be null and void due to their imposition constitution and lack of quorum.

Due to the July 2018 elections, the LCCs were duly constituted as stipulated in accordance with law and they are living up to their mandate of administering justice to the community at the grass root irrespective of the challenges cited in during the study. In regard to the effectiveness of the LCCs, both positive and negative responses were expressed by the Respondents. It was felt that the LCCs were cost effective and quick at dispute resolution compared to the formal courts. The LCs were found to be easy and convenient to access and it neither required transport services since they could be held anywhere and there was no need for hiring a lawyer. The LCCs had the ability to handle a wide range of cases such as: a) land disputes/ wrangles, rent defaulters, family issues, petty theft cases mainly involving children, among others.

Charging of exorbitant fees to litigants who seek redress from these courts thereby deterring some from accessing justice; unfair/biasness judgments, lack of skill and capacity to handle the matters, corruption among others are listed as the commonest hindrances to effectiveness of the LCs in delivering justice at the grass root. Other issues that were negatively affecting effectiveness of LCs were: lack of facilitation or salaries for the members, Lack of office stationery, poor record keeping and lack of privacy and confidentiality.

Therefore, irrespective of the cited challenges; the LCCs have continued to be more accessible, cost effective, popular and nearer to the people. This study establishes that the majority of the people prefer LCCs as the courts of first instance and thus if the cited challenges are addressed and recommendations implemented, these LCCs will be more effective in executing their mandate of administering justice at the grass root.

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Appendix I : Questionnaire

Date:

(All Categories of Respondents)

*** Do you recognize the efficacy of Local Council Courts in Administration of Justice?

Yes No

(If screening answer is "NO" do not fill in questionnaire)

Local Council Courts and Administration of Justice

Name of Local Council _____

Level of Local Council (LC I, LC II, LC III) _____

Section 1: Background Socio and Economic characteristics

Tick appropriate answer / option

1. Sex

Male Female

2 Age of respondent in complete years? _____

3 Religion _____

4 Have you ever attended school?

Yes No

5 If yes, which level of schooling did you complete?

- Primary (1-4)
- Primary (5-7)
- Secondary (O-Level)
- Secondary (A-Level)
- Tertiary
- Other (specify) _____

6 Marital status of respondent?

Single Married Separated/Divorced Widowed

Other (Specify) _____

7. What is your main Occupation?

- Peasant/Farmer Small scale business (petty trade)
- Casual laborer Professional (Specify) _____
- Other (Specify) _____

Section 2: Understanding the Legal Framework of Local Council Courts in Uganda

8. Are you aware of the existence of Local Council Courts in Uganda?

Yes No

If Yes, what is your view on the legality of Local Council Courts in your area?

.....
.....
.....

9. Are the current laws relevant in empowering the Local Council Courts to adjudicate on various matters appropriately?

Yes No

Elaborate on your choice above

.....
.....
.....

10. What types of cases are entertained by Local Council Courts in your area?

.....
.....
.....
.....
.....

11. How do you rate the role played by the Local Council Courts in adjudicating on the various matters / cases that lie before them?

Poor Fair Not Decided Good Better Best

Please elaborate on your choice above

.....
.....
.....

12. Does the Local Council Courts in your area follow the prescribed procedures during their sitting?

Yes No

Section 3: The factors Responsible for Promoting and Hindering Local Council Courts in Justice Administration

13. Generally, what are the factors that promote the good working relationship between the Local Council Courts and the residents of this area?

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14. Overall, what are the challenges exhibited while handling a matter before the Local Council Courts?

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15. What are the problems associated with appearing before Local Council Courts?

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Section 4: Understanding the Effectiveness of the Legal Framework on Local Council Courts in Uganda

16. Do you think that the current laws governing the Local Council Courts are effective in promoting Justice Administration by the courts?

Yes

No

Why

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.....

17. What are the Weaknesses/ of the LCs in conflict resolution (*What is not good about the process*)

(Multi -responses)

- Lack of skills and capacity
- Limited range of cases handled
- Lack of Privacy and confidentiality
- Charge the victims
- Unfair/biased Judgment
- Delay
- Lack of Security
- Poor facilities
- Other Specify

Why? Please explain

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.....

Appendix II: Interview Guide

(All Categories of Respondents)

Section 1: Bio data

Name.....
Age
Sex.....
Religion
Level of education.....
Marital status.....
Place of interview and, date and time
Limitation

Section 2: Local Council Courts and Administration of Justice

Name of Local Council _____
Level of Local Council (LC I, LC II, LC III) _____

A) Understanding of Administration of Justice

What is your understanding of Justice?
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What do you understand by the term administration of justice?
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What indicates that there is administration of justice in your area?
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B) Matters / Cases handled by LCCs in Administration of Justice

What type of cases do you get in local council courts?

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.....
.....

How do you handle these cases? (Elaborate the process)

.....
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.....
.....

When do you convene these meetings?

.....
.....
.....

What type of cases don't you handle?

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.....
.....

Why don't you handle some type of cases?

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.....

What common type of conflict resolution do you use

.....
.....
.....

C) Challenges and Problems

What are the key challenge/problems you find in doing your Work?

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.....

D) Strength and Weakness

What are the strengths of local courts in administration of justice?

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.....

What are the weaknesses of the local courts in administering justice?

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.....

E) Administration of Justice

What suggestions do you have for improvement?

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Do you have any questions?

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