THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

PC. CIVIL APPEAL 16 OF 2019

(Originating from Mbarali District Court in Civil Appeal No. 12/2019 and Rujewa Primary Court, Civil Case No. 8/2019)

THE CHAIRPERSON OF IBOHORA

SCHOOL BUILDING COMMITTEE..... APPELLANT

VERSUS

SANDE MAYOWA..... RESPONDENT

JUDGMENT

Date of Last Order: 16.06.2020

Date of Judgment: 03.07.2020

MAMBI, J.

This appeal originates from an appeal filed by the appellant namely **THE CHAIRPERSON OF IBOHORA SCHOOL BUILDING COMMITTEE** through the learned Counsel Mr Fortunatus Mwandu. Earlier when the matter was before the Primary Court, the Court

made its decision in favour of the appellant. The respondent thereafter successfully appealed to the District Court of Mbarali.

Aggrieved, the appellant filed an appeal basing on the following three grounds of appeal:

1. That the trial District Court erred in law and fact by delivering judgment in favour of the Respondent while the Respondent is the one who breached the terms of contract.
2. That the District Court erred in law and fact to decide the matter in favour of the respondent without making consideration to contract which entered by the parties and law which governs the contract.
3. That the trial District Court erred in law and fact to decide the matter in favour of the respondent basing on the assumed evidence which produced by the respondent without relying to the contract.

During hearing the appellant was represented by the learned Counsel Mr Fortunatus, while the respondent was represented by Mr.B.J.Mhelela, the learned Counsel. All parties agreed to dispose of the matter by way of written submissions and this court ordered parties to do so.

In his submission on the grounds of appeal, the District Council Solicitor for the appellant Counsel submitted that the respondent breached the contract agreed as he failed to complete the work in time. He argued that the appellant witnesses testified that the appellant failed to perform his legal obligation as agreed.

In response, the respondent counsel submitted that all the grounds of appeal have no merit. He argued that the District Court was right in its Judgment. The Learned Counsel further submitted that as per the parties' agreement the respondent was required to use his own materials and resources to mend the doors and windows but the appellant never enabled perform his obligations.

Before I went through the grounds of appeal and submission from both parties, I thoroughly went through the documents from both the primary and District Courts. My perusal has revealed that there were omission that goes to the root of the case. This is due to the fact that the matter at both the primary and District Courts was not properly filled since the respondent did not include the necessary party in the suit that is land Application No. 5/2013.This made this court to use is revisionary and supervision powers sumotu.

Generally, the High Court can exercise its revisional jurisdiction either *suo motu* or on application. The High Court has the power to revise the proceedings of the lower courts or Tribunals if it appears that there has been an error material to the merits. The inherent revisionary powers of the High Court are enshrined under both section 44 of the Magistrate Courts Act , Cap 11 [R.E2002] and Section 79 of CPC Cap 33 [R.E. 2002] respectively. Indeed this court has power on its own motion or suo motu if it appears that there has been an error material to the merits of the case involving injustice, to revise the proceedings and make such decision or order therein as it may think fit. See ***Benedict Mabalanganya v Romwald Sanga civil***

Application 1 of 2001, Court of Appeal of Tanzania at Mbeya (2004) (unreported). This is provided under both section 44 of the Magistrate Courts Act, Cap 11 [R.E2002] and Section 79 of CPC Cap 33 [R.E. 2002] respectively. For easy reference section 44 of the Magistrate Courts Act, Cap 11 which deals with addition powers of supervision and revision by the High Court provides that;

> *"**Additional powers of supervision and revision***
>
> *(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court–*
>
> *(a) shall exercise general powers of supervision over all district courts and courts of a resident magistrate and may, at any time, call for and inspect or direct the inspection of the records of such courts and give such directions as it considers may be necessary in the interests of justice, and all such courts shall comply with such directions without undue delay;*
>
> *(b) may, in any proceedings of a civil nature determined in a district court or a court of a resident magistrate on application being made in that behalf by any party* ***or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it sees fit"***

Equally Section 79 of CPC Cap 33 [R.E. 2002] provides that:

> *"(1) The High Court may call for the record of any case which has been decided by any court subordinate to it and in which no appeal lies thereto, and if such subordinate court appears–*
>
> *(a) to have exercised jurisdiction not vested in it by law; or*

(b) to have failed to exercise jurisdiction so vested; or

(c) ***to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.***

(2) Nothing in this section shall be construed as limiting the High Court's power to exercise revisional jurisdiction under the Magistrates' Courts Act".

The underlying object of the above provisions of the two laws are to prevent subordinate courts from acting arbitrarily, capriciously and illegally or irregularly in the exercise of their jurisdiction. See ***Major S.S Khanna v. Vrig. F. J. Dillon, Air 1964 Sc 497 at p. 505: (1964) 4 SCR 409; Baldevads v. Filmistan Distributors (India) (P) Ltd., (1969) 2 SCC 201: AIR 1970 SC 406.*** The provisions cloth the High court with the powers to see that the proceedings of the subordinate courts are conducted in accordance with law within the bounds of their jurisdiction and in furtherance of justice. This enables the High Court to correct, when necessary, errors of jurisdiction committed by subordinate courts and provides the means to an aggrieved party to obtain rectification of non-appealable order. In other words, for the effective exercise of its superintending and visitorial powers, revisional jurisdiction is conferred upon the High Court. See *C.K.Takwani in Civil Procedure in India, 7th edition, New Delhi 2015 at page 587-612.* See also ***Manick Chandra v. Debdas Nandy, (1986) 1 SCC 512 at pp. 516 -17: AIR 1986 SC 446.***

Looking at our law there is no dispute that this court has power to entail a revision on its own motion or *suo motu*. The court can also do if it is moved by any party. Looking at the records, I am of the settled mind that this court has satisfied itself that there is a need of revising the legality, irregularity, correctness and propriety of the decision made by the trial and appellate Courts. Now looking at the District Court proceedings, the Tribunal failed to notice that it was not properly moved by the respondent (the appellant by then) by not including the District Executive Council (DED) for the Mbarali District council as the Necessary Party since the Ibohora Primary School is the government school under the local government authorities. In this regard it was mandatory to include the District Executive Council (DED) who is now represented by the Office of the Solicitor Genera under the Attorney General. A necessary party is one whose presence is indispensable to the constitution of the suit, against whom the relief is sought and without whom no effective order can be passed. In other words, in absence of a necessary party no decree can be passed. His presence, however enables the court or Tribunal to adjudicate more "effectually and completely". See also ***Shahasa Mard vs Sadahiv ILR (1918) 43 Bom 575 at p 581*** and ***Kasturi v Iyyamperumal (2005) AIR 2005*** at P.738. Two tests have been laid down for determining the question whether a particular party is a necessary party to a proceeding:

(i) There must be a right to some relief against such party in respect of the matter involved in the proceeding in question; and

(ii) It should not be possible to pass an effective decree in absence of such a party.(See also ***C.K.Takwani on Civil Procedure at page 162-163***)

In this regard, the absence of the DED for Mbarali District Council meant that it should not be possible to pass an effective decree .There is no doubt as the position of law stands that all Public or primary schools that are owned by the government are under the supervision and ownership of the Local government Authorities. This means any person who wishes to sue such schools must sue the District/Town/Municipal or City Director. Alternatively, the only person who can stand on the shoes of those schools whether suing or being sued is the Director responsible for the Local Government Authority at the District, Town, Municipal or City Level.

It is clear from the records that the appellant wrongly sued the **Chairperson of Ibohora Primary School BUILDING COMMITTEE** who was being sued on behalf of the Primary School without involving the District Council. The question is was the Chairperson of Ibohora Primary School Building Committee proper party to be sued at both Courts?. The answer is obviously no since the only authorized person to stand in court for the government Primary School was the Mbarali District Executive Director (DED) since the Chairperson of Ibohora Primary School Building Committee is under the Mbarali District Council and the procedures to sue local Government Authorities are Provided under the Local Government (Urban Authorities Act) Act, Cap 282 [R.E.2002]. Looking at the trail Records, it is clear that the parties were ***the Chairperson of Ibohora Primary School Building***

Committee (appellant now) and ***SANDE MAYOWA(respondent now)***. However, both courts failed to notice and observe such omission and the courts proceeded illegally determining the matter. In this regard, I am of the settled view that both lower courts were wrong in determining the matter that was instituted without involving the necessary party. If the Chairperson of Ibohora Primary School Building Committee entered into the contract with the respondent for constructing windows for the Ibohora Primary School it means that he did so on behalf of the School.

This at the end will mean that the Chairperson of Ibohora Primary School Building Committee had no locus standi in that case and the both courts ought to have noted that but surprisingly it just proceeded to determine the matter. This raises another issue of locus standi. The *locus standi* is the matter of jurisdiction issue and it is rule of equality that a person cannot maintain a suit or action unless he stands in a sufficient close relation to it so as to give a right which requires prosecution or infringement of which he brings the action. In other words *locus standi* is the right or capacity to bring an action or to appear in a court. This means that that person with locus standi can appear to be heard in court, or to address the Court on a matter before it. This means that it is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. Lord Justice James, a distinguished English Judge, laid the principle down in 1880 a persuasive decision in the ***Ex P. Sidebotham***

case[1880) 14 Ch D 458, [1874-80] All ER 588] to the effect that a man was not a 'person aggrieved' unless he himself had suffered a particular loss in that he had been injuriously affected in his money or property rights. This decision became the *locus classicus* on the subject and was often applied. Furthermore Australian jurist Leslie an in her book entitled "*Locus Standi*", Stein defines it as:

> *"...**the existence of a right** of an individual or group of individuals ... to have a court enter upon an adjudication of an issue ... before that court by proceedings instigated by the individual or group."*

Reference ca also be made to another persuasive decision in ***R v Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd*** **[1966] 1QB 380 at 400-1** where Lord observed that:

> *"The court would not listen, of course, to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done."*

I also wish to refer another Canadian Court decision (persuasive) in ***Saskatchewan Ltd. v Sask. Liquor and Gaming Authority*** (604598). In this case, the Saskatchewan Court of Appeal adopted these words in regards to *locus standi*:

> *"**A place of standing; standing in court.** A right of appearance in a court of justice ... on a given question. "Roughly speaking, this place of standing, enabling a person to appear before and be heard by a court in relation to a given question, may be acquired in one of two*

ways: ***as of right, in reliance upon one's own private interests in the question (private interest standing);*** *or with leave of the court in reliance largely upon the public's interest in the question (public interest standing)."And standing may exist, or be granted, in both civil and criminal proceedings, proceedings of one sort and another involving claims of various kinds, including a claim that a law is unconstitutional."(emphasis supplied with).*

It is clear from the decision of our court and other jurisdictions including the laws, that in order to maintain proceedings successfully, a plaintiff or applicant must not only show that the court has power to determine the issue but also that he is entitled to bring the matter before the court. The crucial question at this court is, did the Chairperson of Ibohora Primary School Building Committee located in Mbarali District Council had locus standi to appear to be heard in the Courts?. I have already answered this question that it was only according to the law the Mbarali District Counsel Executive Director who had locus standi to appear before both courts. Looking at the records at both the courts there is no doubt that the Chairperson of Ibohora Primary School Building Committee had neither had *locus standi* nor had he any cause of action since he was not the owner of the of the land nor mandated by the law to stand and represent the Ibohora Primary School. However, the District Court failed to notice and observe such omission and it proceeded illegally determining the matter. Now if he had no locus standi at the both courts, it is obvious that the subsequent proceedings at both courts were illegal thus a nullity. This means

that it would not be possible to pass an effective decree in absence of such a necessary party.

Since the applicant at the Tribunal has no *locus standi* it means he had no any cause of action. Briefly, a cause of action means the fact or combination of facts which gives rights to a right of action. This means that even the respondent could have proved his claim, it could not be possible to pass an effective decree against the Chairperson of Ibohora Primary School Building Committee.

From the forgoing reasons I am of the settled mind that and I hold so that both the Primary and District Courts acted, capriciously and illegally or irregularly in the exercise of their jurisdiction in making their decision. From the circumstances, therefore this court gives holds that both courts did determine the suit that did not include the property and necessary party. On a proper construction of Order I Rule 1 of the Civil Procedure Code and application of the guiding principles as discussed by the court in various cases, I am increasingly of the view that the Director of District Counsel (DED) of Mbarali District Council presence before the both courts was necessary. In my view, his presence would enable the courts to effectually and completely adjudicate upon the matter at its hand. I am of the considered view and I hold so that District Court wrongly passed the Decree (in the absence DED for Mbarali District Council) against the appellant and such decree was not effective at any rate. In this regard the subsequent proceedings were illegal thus a nullity.

In the premises, the proceedings and judgments of both courts are nullified and the decision and any order made thereof are set aside. Any interested party is at liberty to institute a case at a competent court if his thinks he has right and he wishes to do so. Considering the circumstance of the case, I make no order as to costs.

A. J. MAMBI

JUDGE

03.07. 2020

Judgment delivered in Chambers this 3rd day of July, 2020 in presence of both parties.

A. J. MAMBI

JUDGE

03.07. 2020

Right of appeal is explained.

A. J. MAMBI

JUDGE

03.07. 2020