IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

CIVIL REVISION NO. 4 OF 2021

(Originating from the Ruling & order of the District Court of Karagwe at Kayanga in Civil Case No.21 of 2019)

FULL GOSPEL BIBLE FELLOWSHIP CHURCH.....APPLICANT

VERSUS

ELGOODNESS EMMANUEL RWATTO.....RESPONDENT

RULING

08/12/2021 & 23/12/2021

NGIGWANA, J

Full Gospel Bible Fellowship Church through the services of Mr. Scarius S. Bugabile, learned counsel has made an application under certificate of urgency, and by chamber summons under section 44 (1) (b) of the Magistrates' Courts Act, Cap 11 R: E 2019 Cap, Section 79(1) (c) and 79 (3), Order XLIII rule 2, and Section 95 of the of the Civil Procedure Code Cap 33 R:E 2019 and is supported by an affidavit deponed by applicant's Principal Officer namely; Rev. Jacob Magesa, seeking for the following orders;

(i) That this Court be pleased to call for the record, examine, inspect, revise, quash and set aside the proceedings, decision and orders of the of the District Court of Karagwe (**M. C. Manjale -RM)** in Civil Case No.21 of 2019 dated 03/03/2021 due to their incorrectness, irregularity, illegality and inappropriateness.

(ii) Costs of the application

(iii) Any other relief(s) the Honorable Court may deem fit and just to grant

The application was opposed by the respondent, wherefore, prays for the dismissal of the application with costs.

When the matter was called on for hearing, the applicant had the legal services of Mr. Scarious Bukagile, learned advocate while the respondent had the legal services of Mr. Mathias Rweyemamu, learned advocate. The application was argued orally.

In the terms of affidavit in support the application, the respondent on 10th September, 2019 filed a suit against the applicant claiming Tshs 45,000,000/= being additional costs for the changed BOQ, Tsh 19,000,000/= being costs for finishing and handling over the buildings to the applicant, general damages at a tune of Tsh 20,000,000/= and costs of the suit.

The applicant via Amended Written Statement of Defense strongly disputed the claims. That, on 17/02/2021, during the trial, when the respondent was cross-examined by the counsel for the applicant, the counsel for the respondent raised the issue that the counsel for the applicant has made an admission of Tsh.19,000,000/= as a result, the trial court entered judgment on admission. That the purported admission order is not maintainable and executable for being not clear, ambiguous and equivocally on the part of the applicant, thus not an admission in the eye of the law.

It was further averred that apart from the serious points of facts arising thereof, the Respondent sued a non-existing body due to the fact that the name of the applicant appearing in the plaint does not appear in the certificate of registration.

The counter affidavit sworn by Mathias Rweyemamu is to the effect that the admission of an advocate is as good as admission of the party to the suit, and the admission made by the advocate for the applicant was clear and unequivocal. That, in the trial court, the applicant via his advocate raised the Preliminary objection that, the respondent sued a wrong party, but the objection was overruled. That the applicant if aggrieved, ought to have lodged an appeal to the High court, and not the present application.

Submitting in support of the application, Mr. Scarius adopted the affidavit supporting the application and stated that the purported admission does not amount to an admission in the eye of the law as it was ambiguous, and equivocal. He further stated that the admission was not at all supported by pleadings.

Bukagile further argued that the Applicant had no right to be sued in its own name, and that it was upon the respondent sue the party with capacity to be sued. He made reference to the cases of **Twela Alkikwetwela Registered Trustees and Another versus S. Gilla and Another**, Civil case No.6 of 2003 HC at Bukoba, **Kanisa la Anglikana Ujiji versus Abel Samson Heguye,** Labour Revision No.5 of 2019 HC at Kigoma and **Dr. Hamza K. Khalifa versus Executive Secretary – The**

Tanzania Commission for Universities (TCU) and Two others, Civil appeal No.148 of 2019 HC-at Dsm.

Mr. Mathias Rweyemamu on his side argued that, the admission of Tshs. 19,000,000/= was made by the applicant's counsel thus the same was proper. The admission order was titled by the trial Magistrate as **"Ruling of the court" thus, Rweyemamu** urged court to remit back the case file for the trial Magistrate to correct the order as provided for under section 96 of the Civil Procedure Act, Cap 33 R: E 2019, so that the same can read as **"Judgment on admission"**

Rweyemamu added that the issue whether the respondent sued a right party or not was raised in the trial court as a preliminary objection, but it was overruled, thus, that being an interlocutory order, it cannot be entertained in this application.

In his brief rejoinder, Bukagile stated that, the statement of the counsel was in the form of a question, thus, does not amount to admission. He further stated that what was done by the trial magistrate was not a clerical error or arithmetical error, therefore cannot be corrected under section 96 of the CPC. He further stated that High Court is empowered to make revision of the of the orders of subordinate courts where necessary

Having heard parties' submissions, it is now my duty to consider whether the application is meritorious or otherwise.

The central issues in this revision application are; first; whether an admission which was recorded by the trial court was an admission before

the eye of the law or otherwise, and second; whether the applicant had capacity to be sued.

Generally, the High Court can exercise its revisional jurisdiction either ***suo moto*** or **on application as in our case**. As correctly pointed out by both learned counsel, the High Court of Tanzania has the power to revise the proceedings the District Court if it appears that there **has been an error material to the merits of the case involving injustice.** The inherent revisionary powers of the High Court are enshrined under both section 44(1) of the Magistrates' Courts Act Cap 11 R:E 2019 and Section 79 of Civil Procedure Code Cap 33 [R.E. 2019] respectively.

In the Malasyan persuasive case; **R versus Muhari Bin Mohd Jani and Another [1996] C LRC 728-734-5** it was held among other things that the object of revisionary powers of the High Court is to **confer upon the High Court a kind of paternal or supervisory jurisdiction in order to correct or prevent miscarriage of justice. The question which the court must ask itself is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice.** The court went on to state that the High Court having been entrusted with such a wide discretion, should be the last to attempt to fetter that discretion. That the discretion however, like all other discretions ought, as far as practicable to be left untrammeled and free, so as to be fairly exercised according to the exigencies of each case.

In the matter at hand, the admission which is the subject of the first issue was recorded as follows;

RULING OF THE COURT

"....Basing *on the above reasons and dictates of the law under Order XII Rule 4 of the Civil Procedure Code Cap 33 R: E 2019 this court hereby give judgment on admission in favor of the plaintiff and order the defendant to pay Tshs 19,000,000/= (Nineteen Million) to the plaintiff as admitted by the defendant's counsel, pending the determination of any other question between the parties. It is so ordered.*

Sgd M.C Manjale RM

03/03/2021

Right to appeal fully explained

Sgd M.C Manjale RM

03/03/2021".

Admissions in civil cases is governed by Order XII rule 4 of the Civil Procedure Code Cap 33 R: E 2019 which Provides that;

"Any party may at any stage of a suit, where admissions of fact have been made either on the pleading, or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for determination of any other question between the parties; and

the court may upon such application make such order, or give such judgment, as the court may think just"

The essence of this provision is to ensure that a party who is entitled to an admitted debt is not kept from the fruits of his judgment or made incur unnecessary costs pursuing a full hearing. All that the plaintiff is required to is that there is a plain and obvious admission by the defendant.

In the case of **John Peter Nazareth versus Barclays Bank International Ltd,** (1976) E.A.C.A 39 it was held that;

"*For judgment to be entered on admission, such admission must be explicit and not open to doubt"*

In the case of **Cassam versus Sachania [1982]** KLR192 It was held that;

"Granting *a judgment on admission of facts is a discretionary power which must be exercised sparingly in only plain cases where the admission is clear and unequivocal"*

In the case at hand, the purported admission was made by the applicant's counsel during cross-examination. The question was; "***The alleged amount of Tsh 19,000,000/=, for which job was it for while you failed to execute the task at the third and fourth phase?***

Looking carefully how the question was framed, it cannot be said by any means or whatever standard that, the debt of Tshs was admitted by the applicant's advocate Mr. Sileo Mazura. I have gone through the pleadings especially the plaint filed in the trial court on 10/09/2019 and the Amended

Written Statement of Defense filed on 22/01/2020, and found that the applicant made no admission of the debt of **Tshs 19,000,000/=**

It is trite that in order to say that the admission is plainly clear and obvious, the court must be satisfied that the admission is not ambiguous and all material facts regarding the claim are not contested in any way at all. It has to be an admission which has no doubt to the intention of the party making the admission.

In view of the foregoing reasons, it is apparent that the trial court misdirected itself and improperly entered judgment on admission, but also misdirected itself to title the purported admission as" **Ruling of the court"** as the term ruling is not mentioned under Order XII rule 4 of the CPC.

As regards the 2nd issue, the records of the trial court revealed that the applicant vide his former advocate Mr. William D. Fussi filed the W.S.D together with the notice of preliminary objection. The objection read as follows;

"*That this honorable court has been improperly moved since the defendant by the name appearing in the plaint has no legal personality to be sue"*

The objection was dismissed on a simple ground that **FULL GOSPEL BIBLE FELLOWSHI CHURCH (Kanisa la Full Gospel Bible Fellowship) is different from FULL GOSPEL BIBLE FELLOWSHIP.**Though there was no dispute that FULL GOSPEL BIBLE FELLOWSHI is a religious institution/ church.

According to section 79(2) of the CPC, **no application for revision shall lie** or be made in respect of any preliminary or interlocutory decision or order of the Court ***unless such decision or order has the effect of finally determining the suit.***

At the same time section 74(2) of the CPC provides that;

"Notwithstanding the provisions of subsection (1), and subject to subsection (3), ***no appeal shall lie against or be made in respect of any preliminary or interlocutory decision or order of the District Court, Resident Magistrate's Court or any other tribunal, unless such decision or order has effect of finally determining the suit"***

It can be learned from these provisions that interlocutory orders or decisions are generally not appealable or subject to revision. In other words, the general rule is that interlocutory appeals or revisions are not easily entertained for a simple reason that trials must continue uninterrupted.

This does not however mean that a higher court may not interfere in a course of trial before a Magistrate. The Higher court will nonetheless exercise its power on unterminated course of proceedings in a court below although it will do so in rare cases especially where grave injustice might result or where the proceedings in the lower court is nothing but an abuse of court process and this is an exception to the general rule. **In the persuasive case of Christiaan Ndaamakunye Shavuda Versus the State, Case N0:CA10/2015,** the High Court of Namibia departed from the general rule to its exception. In this case, the appellant appealed

against the refusal by a Magistrate to recuse himself from the proceedings. The High Court of Namibia entertained the appeal and finally allowed it because the Magistrate did not refer to the test applicable in applications for recusal.

Section 79(3) the CPC provides that;

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

There is no dispute that the object of revisionary powers of the High Court is to **confer upon the High Court a kind of paternal or supervisory jurisdiction in order to correct or prevent miscarriage of justice. The question which the court must ask itself is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice.**

Having said that, and taking into account the circumstances of this case, I find it a fit case for this court to interfere interlocutory order of the lower court because, remitting back the trial court record for the trial court to proceed with the case will definitely **amount to an abuse of court process, court's precious time and resources will be lost unnecessarily.**

It is trite law that only natural or legal persons (Artificial persons) are legally allowed to maintain actions in court against other legal persons in their own names/capacities. Artificial persons include Companies and

Registered Trustees. In other words, they can be referred to as Incorporated bodies.

In the case at hand, the applicant is a religious institution **(a church).** It is well known that religious organizations are required to be registered. Upon being issued with a certificate of registration, the organization is required to be incorporated and be issued with a certificate of incorporation, from there the organization is deemed to have been incorporated, and therefore can sue or be sued in its incorporation name only.

The records revealed that Full Gospel Bible Fellowship was issued a certificate of **Registration SO.NO.6834 on 18th day of December 1989 under Rule 5 of the Societies (Application for Registration) Rules ,1954.** It was then issued a Certificate of **Incorporation dated 10th March 1992 under The Trustees Incorporation Ordinance, 1956.**

Part of it reads;

"THIS IS TO CERTIFY that THE REGISTERED TRUSTEES OF THE FULL GOSPEL BIBLE FELLOWSHIP is a body corporate....."

This court in that case Kanisa **la Anglikana Ujiji (Supra),** (Mugeta, J) held among other things that Anglican Church or its branches cannot be sued. It was further held in the case of **Singida Sisal Production & General Supply versus Rofal General Trading Ltd and 4 others** Commercial review No. 17 of 2017 that;

"non-existing party does not have legs to stand, hands to prosecute, no eyes to see and mouth to speak either on her own or on behalf of any other person before any court of law"

In the case of **Paul Nyamarere versus UEB,** Civil Appeal No.27 of 2012, suits in the names of a non-existence party rendered a nullity.

In the case at hand, the copy of contract deed was appended to the plaint as EQ1 Titled **"MKATABA WA KUJENGA KANISA LA FULL GOSPEL BIBLE FELLOWSHIP"**

Having read all the trial court records, for the interest of justice, this court found it proper to task Bishop Jacob Magesa Nyamaraga to bring confirmation letter from HQ in relation to registration of his church, the step which was conceded by both learned counsel, and he did so.

The Chairman of the Board of Trustees Bishop Zacharia Kakobe, on 04/12/2021 vide his letter referenced: RTFG/11/04/1 accompanied by a letter from Registration, Insolvency and (RITA) dated 15/07/2011 addressed to the Registered Trustees of Full Gospel Bible Fellowship, made this confirmation;

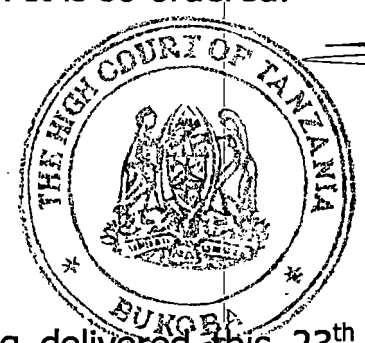
"THE REGISTED TRUSTEES OF FULL GOSPEL BIBLE FELLOWSHIP does hereby confirm that the FULL GOSPEL BIBLE FELLOWSHIP has a Church branch in Kagera which has a pending case before the High Court of Tanzania, Bukoba Registry at Bukoba.

That Bishop JACOB MAGESA NYAMARAGA who is one of the registered trustees of the FULL GOSPEL BIBLE FELLOWSHIP and

who is also the bishop in charge of the affairs of Kagera Region, is handling the case in the best interest of the FULL GOSPEL BIBLE FELLOWSHIP"

In that premises, I hold that the respondent sued a legally non-existing entity therefore the suit was a nullity. The order was issued against a non-existing entity hence was also a nullity, and therefore not executable. I sympathize with the parties for the resources already spent prosecuting this case. Had the Hon. Trial Magistrate properly directed his mind to the law, this case would not have reached this court, and resources spent would not have been spent.

Having said so, I invoke revisional powers of this court under section 44(1) of the Magistrates Courts Act Cap 11 R: E 2019 to quash the proceedings, set aside the judgment/ruling and orders of the trial court for being a nullity. The respondent, if still interested, is at liberty to institute a fresh suit against the party/parties capable of being sued. Taking into account the nature and circumstances of this case, each party shall bear its own costs. It is so ordered.



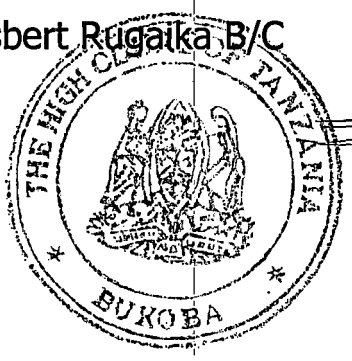
E. L. NGIGWANA

JUDGE

23/12/2021

Ruling delivered this 23th day of October, 2021 in the presence of Mr. Mr.Kabakama holding brief for Mr. Rweyemamu, learned counsel for the

respondent, Mr. Scarius Bukagile, learned advocate for the applicant, and Mr.Gosbert Rugaika B/C



E. L NGIGWANA

JUDGE

23/12/2021