

H/c 1122/04

IN THE HIGH COURT OF TANZANIA
AT DODOMA
DC CIVIL APPEAL NO. 7 OF 2004
(ORIGINAL CIVIL CASE NO. 5 OF 2003
DODOMA DISTRICT COURT AT DODOMA
BEFORE – A.W. MMBANDO, RESIDENT MAGISTRATE)

BINDE SHABANMBINDE & OTHERS APPELLANT

Versus

STELLA LYELYU MGIMWA RESPONDENT

08.06.2006 & 20 .06.2005

RULING/ORDER

MASANCHE, J.

The appellants are three. They are **Binde Shabani Binde**, **Samson Mtaki Mganga** and **Mtao Hamisi Mrisho**. They opened a civil case, RM Civil Case No. 5/2003 in the Court of Resident Magistrate Dodoma, against the respondent, **Stella Lyellu Mgimwa**. I see that they had the services of an advocate Mr. Njulumu. The plaint filed was a long one. However, the prayers asked for were these, and I quote:

"– the plaintiffs pray for judgment and decree as follows:-

- (1) for a declaratory judgment that the defendant be estopped from usurping powers by calling herself as the Manager of the School;*
- (2) for an order that the defendant should stop harassing and embarrassing the plaintiffs;*
- (3) for payment of damages to the plaintiffs, to be assessed by the court;*
- (4) for any other relief(s) as the Honourable Court deems fit to grant;*
- (5) Costs of the suit."*

The Court did not go to full hearing, as I note. Some interim applications were made, and interim rulings made. The last interim ruling made, however, was the one that was delivered on 08.03.2004. That ruling in short "struck out the suit" saying that the plaintiffs had no locus standi in the matter.

Briefly put, the plaintiffs were teachers in a school run by BAKWATA. The school was or is called Dodoma Nuru Secondary School. Then, the school started a project called Upatu. The respondent, however, posing as a Manager of the school, took, it would appear, an upper hand in the project. The plaintiffs protested, alleging that the respondent was squandering the money. They also alleged that, after all, she was not a Manager. So, they sent the

matter to Court, asking the Court to tell her that she was not a Manager, and also prevent her from having anything to do with the school.

I heard some arguments from the two counsels, Mr. Nyabiri and Mr. Njulumu. I had interesting argument from them. However, I put up the matter for some necessary orders because I saw a lot of irregularities in the whole of the case; and these, I will tell:

First, the plaintiffs are actual three. In that case, therefore, this ought to have been a representative suit (see Order 1 Rule 8 of Civil Procedure Code 1966).

And, as was pointed out by Samatta J (as he then was) in **Pius Msiywa and 2 Others v The Secretary of Kijiji cha Ujamaa Marochu** (1979) LRT N.3,

"- institution of a representative suit is not a matter of right. A party wishing to commence suit proceedings must first seek leave of the Court to do so. Such leave must be sought by way of chamber application.

It will also be readily noted from the rule that after leave has been granted by Court, and the representative suit has been filed, the court must give notice of the suit to all persons having the same interest with the plaintiff(s) or defendant(s) as the case may be."

What it means, therefore, is that assuming the plaintiffs wanted to open a "*suit*", they ought to have followed that procedure.

But, this sends me to the second point: Could a suit be filed in the Court of Resident Magistrate or District Court, for a declaratory order? I answer that it could not.

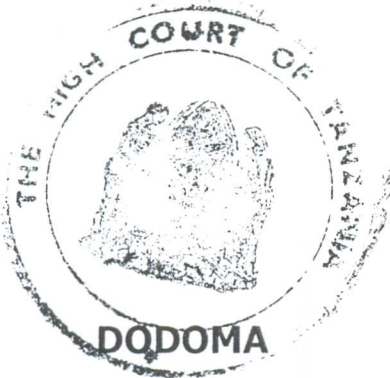
A declaration order is a prerogative order, just like the orders of certiorari, mandamus and prohibition. It is, therefore, an order which can only be sought in the High Court under **The Law Reform (Fatal accident) Miscellaneous Provision Act Cap. 310 as revised by 2002 edition**, in a judicial review. A judicial Review is a remedy that may be used to:

1. Quash a decision (certiorari);
2. Stop an unlawful action (prohibition);
3. Require the performance of a public duty
(mandamus);
4. Declare a legal position of the litigants (declaration);
5. Give monetary compensation;
- and
6. Maintain the status quo.

A declaratory judgment is the Court's declaration of the rights and duties of the parties before it. Its value lies in resolving a dispute by setting out clearly the legal position.

Thirdly, I see that one of the prayers in the so-called suit was for the defendant to be "*stopped*" from "*harassing*" and embarrassing the plaintiffs. That, exactly, scored my point that the prayers are, among other things, for prohibition also.

All in all, therefore, the opening of RM Civil Case No. 5/2003, in the Court of Resident Magistrate Dodoma, was ill-conceived. The same is struck out with costs.




J.E.C. MASANCHE
JUDGE

20TH JULY, 2006

Mr. Njulumu - For appellants.

Mr. Nyabiri – For Respondents.