

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)**

MISCELLANEOUS APPLICATION NO 197 OF 2017

- 1. TULLOW UGANDA LTD}.....1ST APPLICANT**
- 2. TULLOW UGANDA OPERATIONS PTY LTD}.....2ND APPLICANT**

VERSUS

JACKSON WABYONA}.....RESPONDENT

AND

UGANDA REVENUE AUTHORITY}.....NECESSARY AND PROPER PARTY

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

RULING

This ruling arises from an objection raised by the Applicant's lawyers against the suit filed by the Respondent to review a consent judgment executed between the Applicants and the Uganda Revenue Authority/also described as a Necessary and Proper Party. The ground of the objection is that the Respondent has no locus standi to apply to review the judgment/decree entered by consent of the parties.

At the hearing of the application the Applicant was represented jointly by Counsels Masembe Kanyerezi appearing together with Counsels Joseph Matsiko, Oscar Kambona and Timothy Lugayizi. On the other hand the Respondent was represented by Counsel Mohammed Mbabazi.

The background to the objection is that the Respondent Mr Jackson Wabyona filed an application in Civil Application Number 137 of 2017 for orders that the decree/order dated 19th of June, 2015 entered into between the Respondents namely the Applicants to this application and Uganda Revenue Authority by consent be reviewed and set aside. Tax Appeal No 19 of 2014 against the Tax Appeals Tribunal Application No. 4 of 2011 before the Commercial Court be heard and determined by the court in accordance with the law and for costs of the application to be provided for.

Whereas the Respondents to Civil Application Number 137 of 2017 arising from a Civil Appeal No. 19 of 2014 also arising from Tax Appeals Tribunal Application No. 4 of 2011 opposed the application and filed affidavits in reply, they went ahead and filed the current application under the provisions of Order 6 rule 30 of the Civil Procedure Rules to strike out the Respondent's

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Civil Application No. 137 of 2017 on a point of law that the Respondent has no locus standi to bring the application and for costs of the application to be provided for.

The grounds of the application to dismiss the main application is that the Respondent Mr Jackson Wabyona is neither an "aggrieved person" nor "a person against whom the decree/order was passed" and accordingly does not fall within the scope of persons who can apply for review within the meaning of Order 46 rule 1 of the Civil Procedure Rules or section 82 of the Civil Procedure Act and therefore lacks locus standi to bring the application. In the second ground of the application, it is averred that the Respondent's contention as to the constitutional duty on him as a citizen to protect, preserve and combat misuse or wastage of public property is not a recognised basis for locus standi to bring a review application under Order 46 rule 1 of the Civil Procedure Rules. The Applicants further contended that a review application is distinct from article 50 or article 137 Constitutional actions which have a different basis for locus standi. The Respondent's application is not an action under either of those articles of the Constitution and accordingly further consideration of their scope or applicability is not pertinent.

Thirdly, the Applicants averred that the Respondent's contention that the consent decree/order constitutes an ultra vires act of Uganda Revenue Authority does not create locus standi for a review application under Order 46 rule 1 of the Civil Procedure Rules as distinct from locus standi in a judicial review application which the present application is not.

Fourthly it is averred that is just and proper that the application is dismissed on a point of law on the grounds set out in the Notice of Motion. The application is further supported by the affidavit of Mariam Nampeera Mbowa (Mrs); the General Counsel of the Applicants conversant with the circumstances of the case. The grounds of the application are that the Applicants and Uganda Revenue Authority entered into the impugned consent decree/order in the High Court on 19th June, 2015 and it was endorsed by the trial judge and neither party is aggrieved by the consent. She repeats that the Respondent is neither an "aggrieved person or a person against whom a decree/order was passed" and therefore has no locus standi to bring this application. The rest of the affidavit repeats the grounds in the Notice of Motion and there is no need to regurgitate it here.

In reply Jackson Wabyona, the Respondent herein having read the affidavit of Mrs Mariam Nampeera Mbowa deposed that he is directly and personally affected by the decree/order dated 19th June, 2015 recorded in High Court Civil Appeal No 19 of 2014. The grounds are that: as a citizen of Uganda with a duty to pay taxes, he cannot sit by and be discriminated against by Uganda Revenue Authority preferentially treating the Applicant by allowing them to pay taxes determined arbitrarily through agreements or deals rather than in accordance with the law. Secondly, as a citizen of Uganda with a duty to protect and preserve public property, combat corruption and misuse or wastage of resources, he is aggrieved by the loss of taxes consequent to the waiver or exemption manifest from the impugned decree/order. Thirdly, as a citizen of

Uganda, he is duty bound to be patriotic and loyal to Uganda, uphold the constitution, promote democracy and the rule of law and accordingly any acts in breach of the rule of law as was done in the execution of the decree of 19th June, 2015 is a grievance that directly and personally affects him and entitles him to seek for vindication from the custodian of the Constitution and the rule of law hence the application for review. Fourthly, as a citizen of Uganda where the Constitution is the supreme law, he has a legitimate expectation that public officials with special reference to Uganda Revenue Authority as a tax collector comply with the law in collecting taxes imposed by the law.

Furthermore, he deposed that he is personally and directly affected by the consent decree dated 19th June, 2015 entered into by the consent between the Applicants and Uganda Revenue Authority as follows:

Firstly, the decree/order caused the loss of taxes amounting to over US\$471,612,020. On the basis of that the Ugandan population is approximately 34,000,000 and his share of what was lost is US\$13.87 in the event that the taxes collected were to be shared out among Ugandans. Secondly, in the event that the taxes are used to build infrastructure and provide social services and welfare for the citizens, he is a direct beneficiary of such services. Thirdly, the decree/order was a deal between Uganda Revenue Authority and the Applicant is reached contrary to the constitution and laws of Uganda. This has an adverse effect and is prejudicial to the rule of law in Uganda. Fourthly, Uganda Revenue Authority acted arbitrarily and ultra vires its mandate when through the execution of the decree it waived taxes imposed by the law and had become due and payable by the Applicants. This act by Uganda Revenue Authority is a breach of the rule of law and caused the loss of public property. On the fifth ground, the waiver of taxes is contrary to the law and is discrimination in favour of the Applicants who were preferentially treated as against him and the rest of the taxpayers in Uganda. An act that discriminates against him infringes and violates his right of equal treatment before the law and equal protection by the law. On the 6th ground, the decree/order being an agreement between Uganda Revenue Authority and the Applicant means that the incidence of taxation on a taxpayer is not determined by agreement and compromise of the parties rather than the law and that adversely affects the rule of law in Uganda and is a privilege for the selective few. On the seventh ground the decree/order being an agreement between the parties would an effect of causing loss of a colossal sum of taxes due to the government requires the legal advice of the Attorney General. Without that advice, the decree/order is illegal and a nullity which has adverse implications on the rule of law in Uganda. On the eighth ground, the decree/order was suspect or tainted with fraud and corrupt practices on the side of Uganda Revenue Authority. It was improper performance beneath the expectation rendering the Applicants culpable and on a prima facie liable under the UK Bribery Act, 2010. On the ninth ground, he is a resident of Hoima district which is within the Albertine region where oil and gas was discovered and the exploration and production activities are taking place.

Being a resident in that area, he is a direct beneficiary of the economy and development activities in the area resultant from the oil and gas revenue.

Furthermore, Mr Jackson Wabyona in paragraph 5 of the affidavit in reply deposed that the issues and controversies surrounding the decree/order raised in the review application are matters of great and general public importance that merit adjudication and final determination by the bastion of justice and custodian of the rule of law as hereunder:

- Whether taxes imposed by law can be determined and collected by the agreement of the parties and not law.
- Who has powers to waive and impose taxes imposed by the law?
- Whether parties to an appeal can agree to set aside a judgment of a lower court or tribunal by a compromise or agreement?
- Whether the conduct of Uganda Revenue Authority in concluding the settlement and subsequent order/decreed amounts to improper performance beneath the expectation test as to imply a commission of the offence, fraud and corruption cahoots with Uganda Revenue Authority by the Applicants.
- Whether the impounded Decree/order is valid without the legal advice from the Attorney General.
- Do citizens have legitimate expectations from the tax collectors and assessors to collect taxes imposed by the law?

In paragraph 6 of the affidavit he deposed dated 21st February, 2017 sworn in support of Civil Application Number 137 of 2017 he deposed to the following facts:

- He is a citizen of Uganda with particulars of his national ID provided.
- That as a citizen he has a duty under the constitution including protecting and preserving public property, combat corruption and misuse or wastage of public property;
- He is aggrieved as a citizen by the Decree/order that caused loss of taxes calculated as amounting to US\$ 471,612,020.72;
- The acceptance of US\$250 million in full and final settlement as opposed to the award by the tax appeals tribunal in TAT Application Number 4 of 2011 was a waiver of taxes;
- The waiver of tax made in the impugned decree/order is suspect and tainted with fraud as it was arbitrary and ultra vires the powers as demanded of Uganda Revenue Authority;
- The Respondent may be culpable under the UK Bribery Act, 2010 since Uganda Revenue Authority's conduct was beneath the expectation test.
- The waiver of taxes was illicit enrichment and an act of corruption, fraud resultant from connivance and collusion between Uganda Revenue Authority and Tullow Uganda limited.
- There was breach of the rule of law.
- The taxes had been collected by the agreement of the parties rather than the law.

- The judgment of the Tax Appeals Tribunal had been set aside by the agreement of the parties contrary to precedents.

The Respondent further deposed on the basis of advice of his lawyers Messieurs Nyanzi, Kiboneka & Mbabazi advocates that no affidavit in reply had been filed to rebut and challenge his evidence in the Miscellaneous Application No. 137 of 2017 and therefore the Applicant has conceded to the application therein.

All the facts in the above application are admitted and therefore the issues in the application are moot or otherwise there are no live controversies to be adjudicated and determined by the court.

For a point of law to be argued, there has to be facts upon which the point of law is founded coupled with pleadings where the point is pleaded. On the further advice of his lawyers, he contended that in the absence of an affidavit in reply to constitute pleadings in Civil Application No 137 of 2017, where facts to be found the points of law are laid out and pleaded, there is no such record as to make the point of law, the Applicants seek to argue, apparent and manifest. His grievance is linked to the grounds for review and accordingly the issue of locus and being aggrieved or to be determined in consideration of the grounds but not in isolation. The determination of whether he is an aggrieved person and whether he has locus is a determination of the substantive review application involving consideration of whether as an aggrieved person he has satisfied the court with the required reasons to warrant a review. The application seeks to stay full and shut out his grievance against the unconstitutional, illegal and unlawful or fraudulent order/decreedoes the rule of law in Uganda at stake with far wider implications. Lastly he deposed that as a citizen of Uganda and a direct beneficiary of the taxes collected and paid unto the consolidated fund, any loss, wastage or pilferage of taxes prejudicially and adversely affects them directly and personally through a diminished resources envelope of public funds and consequent delivery of public services, amenities and infrastructure.

Submissions of Counsel:

Counsel Masembe Kanyerezi, lead Counsel for the Applicants addressed the court orally and also sought to rely on skeleton arguments while the Respondent represented by Counsel Mohammed Mbabazi responded orally.

The gist of the Applicant's submissions after a reference to the facts submitted that the Respondent's application to review the consent judgment pursuant to Order 46 rules 1 and 8 of the Civil Procedure Rules on various grounds set out in the notice of motion is not pertinent for purposes of addressing the issue of locus standi. The Applicant's contention is that the Respondent has no locus standi to apply for review of the decree and the application ought to be dismissed with costs. Furthermore, in the submissions the Applicants reserved their position as to the merits of the review application. With reference to Order 46 rule 1 of the Civil Procedure Rules Counsel highlighted the phrase "Any person considering himself or herself aggrieved". He

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submitted that it is clear from the provisions of the Order that to have locus standi to apply to review a decree or order the Applicant must be an aggrieved person or a person against whom a decree or order was passed.

In addressing this question Counsel relied on the case of **Ladak Abdulla Mohammed Hussein versus Griffiths Isingoma Kakiiza and two others** SCCA number eight of 1995 and particularly the judgment of Justice Odoki JSC in relation to locus standi to apply for review. It was held that a person considering himself aggrieved means the person who has suffered a legal grievance according to the case of Yusufu versus Nokrach (1971) EA 104 and in re Nakivubo Chemists (U) Ltd (1971) HCB 12. The above two authorities do not make it clear whether the expression "any person considering himself aggrieved" is limited to parties to this suit or may include third parties as in that appeal. With reference to the text book by Manhar and Chitaley on "the Code of Civil Procedure (1985 edition) volume 5 page 145 it is written that a person aggrieved means a person who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully affected his title to something. It is not sufficient that he is not something which it would have obtained if another order had been made. A decree or order against a person who is not a party thereto is not on general principles of law binding on him. Such a person therefore cannot ordinarily have a legal grievance against the decree or order and consequently cannot apply for review of the decree or order under the rule.

In the second authority is the case of **Jinja Municipal Council and Another versus the Registered Trustees of the Indian Recreation Club and Two Others High Court Miscellaneous Application Number 66/2004** where her Lordship Lady Justice Irene Mulyagonja ruled that in the application for review with reference to the case of Ladak Abdulla (supra) the Supreme Court did not rule that in all cases where a third party had a legal interest in the chose in action in the suit he or she can apply for review of a judgment or order. It is only persons with a "legal grievance" arising from the order that can apply for review. With reference to order 46 rule two of the civil procedure rules, before one can apply to have a decree or order reviewed; the same must have been made or passed against him or her. The terms of the order or decree should be such as will directly affect the party applying for review. This means that it must first be proved with certainty that the decree or order can be enforced against the Applicant.

In **R versus London Sessions Appeal Committee Ex Parte Westminster City Council, [1951] 1 All ER at 1032**, their Lordships held that it cannot be said that because the Borough councils decision had been reversed by the magistrates, it made the Borough Council a person aggrieved for purposes of section 64. The words of this section and not "any person affected by any order" but "any person aggrieved by any order" they relied on the "best definition" of the expression "aggrieved" in ex parte Sidebotham. Re: Sidebotham (3) where James LJ held that the expression "person aggrieved" do not really mean a man who is disappointed of any benefit which he might have received if some other order had been made. That it included "person aggrieved" and must
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be 'a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something'.

Finally in authority for, **Ealing Borough Council versus Jones [1959] 1 All ER 286** Lord Parker CJ tried to establish whether there were general principles which could be extracted from the numerous authorities. He held that it was easier to say what will not constitute a "person aggrieved". From the authorities, the expression "person aggrieved" is not a person who is disappointed or annoyed at the decision. A prosecutor in a quasi criminal case, in a matter affecting a highway, was never a person aggrieved. He might be annoyed at finding that what he thought was breach of the law was not a breach of the law. Furthermore the person is not aggrieved when that person being a public body has been frustrated in the performance of one of its public duties. Interference by the magistrate in the execution of that duty does not make the City Council an aggrieved person. A mere annoyance because what was thought to be a breach of planning control, and equally the mere fact that the local authority charged with certain duties under the Town and Country Planning Act 1947 had been frustrated in the performance of what was thought was its public duty was not enough to make the local planning authority an aggrieved person.

On the other hand he held that what is included in the words "aggrieved person" if costs are awarded in any case against the local authority, the local authority would be an aggrieved person as a result of the decision having involved an order as to costs. If the result of the decision was to put some legal binding on the public body concerned, it has been held to make them a person aggrieved and in that connection the decision of the magistrate that an owner was not obliged to provide a dustbin placed the burden on the local Council to provide a dustbin and they would be persons aggrieved.

On the basis of the above authorities learned Counsel for the Applicant submitted that the question of the basis of the propriety of the decree is not what is before the court in this application. That question would go to the merits and can only be addressed in the main application for review. At this stage, the preliminary question is whether the Applicant was not a party to the suit and was not demonstrated that the decree directly affects them, has locus standi to file an application for review of the decree. The Applicants and Uganda Revenue Authority have an impregnable basis for the decree having been entered into and the decree is in all respects valid in law. The debate on that however would go to the merits and can only be continued to by a party who has "locus standi".

The Respondent was not a party to the proceedings in which the decree was extracted and is a third-party who ordinarily other than in exceptional circumstances would not be a "person aggrieved" unless it can show that the decision while not made against them in name, directly affects them as an individual such as to amount to a legal grievance. The rationale of the rule is

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obvious because the stranger to legal proceedings were not have all the facts and therefore runs a serious risk wasting courts time with ill founded allegations.

As far as the pleadings are concerned, the Respondent does not contend that he was a party to the proceedings resulting in the decree. To the extent that the Respondent contended that the decree resulted in less tax being paid by the Applicants contrary to what had been decreed by the Tax Appeals Tribunal and as a citizen of Uganda, he was affected by the decree in so far as he would have a "putative share" in the taxes, amounting to approximately US\$13.87 and his putative share was reduced by reason of the decree. Furthermore he bases his locus standi on the fact that he is the recipient of benefits and services through expenditure derived from taxes. That he has a duty to prevent wastage of public resources that a tax waiver would entail. The basis of the waiver is unknown, and there is corruption which he is mandated to combat. That Uganda Revenue Authority acted ultra vires in granting the waiver of taxes.

None of the above contentions constitute a right to apply for review of the consent judgment. Firstly, the Respondent is not a party to the proceedings giving rise to the decree which in itself should dispose of the application under Order 46 rule 1 of the Civil Procedure Rules.

The argument that the loss of taxes as a consequence of the alleged waiver translated to about US\$13.87 introduction of tax funded benefits utmost amounts to an argument that the Respondent was disappointed of the benefit which he might have received if some other order had been made such as upholding the decision of the Tax Appeals Tribunal. At the most, that would make the Respondent a person affected by the decree and not a person aggrieved by the decree as pointed out in **Ex Parte Westminster** (supra) and does not give the Applicant locus standi. The Respondent does not fall within the definition of the expression "person aggrieved" defined in **Ex Parte Sidebotham**. He is not in the relation to the decree, "a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something or wrongfully affected his title to something". The decree only provides for the tax amount payable by the Applicants to Uganda revenue authority and does not by any stretch of imagination speak to the Respondent or any entitlement of his and as such the Respondent is not a person aggrieved.

The Respondents contention as to his constitutional duty as a citizen to protect, preserve and combat misuse of wastage of public property is not a basis for locus standi to bring an application for review under Order 46 rule 1 of the Civil Procedure Rules. A review application is distinct from an article 50 of article 137 constitutional action which has a different basis for locus standi. The application is not an action under any of the above articles and accordingly further consideration of their scope or applicability is not pertinent to the issue before the court.

The Respondent's contention that the consent decree/order constitutes an ultra vires act of Uganda Revenue Authority does not create locus standi to file an application under order 46 rule

one of the civil procedure rules as distinct from locus standi in a judicial review application which the present application is not.

Finally the Applicant's Counsel submitted that the Respondent has no locus standi to bring this application and the preliminary objection should be upheld and the review application dismissed with costs.

In reply Counsel Mohammed Mbabazi submitted that the response of the Respondent was not in writing that he was relying on a list of authority in two volumes and different headings. One heading is that the application has a constitutional and statutory foundation which gives the Applicant's legal grievance. The application therefore has a statutory and constitutional foundation. Secondly, the question of locus standi, he sought to serve the plaintiff ought not to be determined as a preliminary objection or in the abstract. On the third heading, the question of locus standi should not be determined without an affidavit in reply of the Applicant and the pleadings are incomplete.

On the fourth heading, the question is the appropriate procedure for the Applicants judicial redress. On the fifth heading, the authorities deal with the right of third parties to seek for review as aggrieved parties. Thirdly the Respondent will address the court on the principles for determining the locus standi of the Respondent and the tests used.

Counsel contended that there is an issue of legitimate interest in the grounds of review and the aspect of the procedural propriety raises the issue of substance over form. The Respondent filed an affidavit which canvasses a wide range of defences to the question of locus standi. Firstly, it shows his direct interest and then the general interest as a citizen. Furthermore the court should not determine the issue of locus standi without looking at the grounds. There was no rebuttal on the side of the Applicants and his contentions in the averments in the affidavit in reply stand unchallenged.

With reference to the issue of third parties, Counsel Mbabazi relied on **Mohammed Allibhai vs. Bukenya and another SCCA number 56 of 1996** and particularly the judgment of Wambuzi CJ as he then was held at page 15 of the judgment with reference to earlier authorities that Order 46 rule 1 of the Civil Procedure Rules is not restricted to parties to the proceedings resulting in the order or decree. However the overall holding of the court was that the Applicant had no locus standi because it was not a person aggrieved within the meaning of section 82 of the Civil Procedure Act as well as Order 46 rule 1 of the Civil Procedure Rules. The expression "any person considering him or herself aggrieved" was not restricted to the parties but is available to third parties. What is material is that where a consent judgment is entered contrary to the law, it is void as between the parties. Similarly the grounds for setting aside a consent judgment are detailed in the case of **Hassanali versus City Motor Accessories Ltd and Others [1972] EA 423** being a judgment of the East African Court of Appeal sitting at Nairobi which, briefly,

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applied the principle in **Hirani versus Kassam (1952) 19 EACA 131**. The court agreed with the statement of law of the lower court that any order made in the presence and with the consent of Counsel is binding on all parties to the proceedings or action or those claiming under them and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the court; or if the consent was given without sufficient material facts or in misapprehension or ignorance of material facts or in general for any reason which would enable the court to set aside an agreement. The same holding was quoted with approval in **Brooke Bond Liebig (T) Ltd vs. Mallya [1975] 1 EA 266**.

The Respondent's Counsel submitted that a third party can apply for review even though in restricted circumstances. He avers that the question of locus standi should not be determined in isolation or in abstract and the grounds of the application should be considered. In any case, the Applicant has a statutory foundation under article 17 of the Constitution of the Republic of Uganda which is to the effect that it is the positive duty of a citizen to combat corruption and misuse or wastage of public property. Furthermore, article 8A of the Constitution provides for upholding the rule of law. The Respondent was not only disappointed but was aggrieved by the fact that there was a breach of the rule of law and that point can be made in the main application.

The Respondent's Counsel also relied on national objectives and object of number 29 of the Constitution on the duties of citizens and paragraph F which requires them to promote democracy and the rule of law. He submitted that this is what the Respondent was doing. It was a positive duty imposed on him by the Constitution that he came to court because there was a breach of the rule of law as averred in the main application. His locus standi was given to him by the Constitution. The Respondent also avers that there is wastage of resources and that there is corruption. In the premises, the Respondents Counsel submitted that it is premature to challenge the locus standi of the Respondent at this stage. Counsel relied on the case of **Inland Revenue Commissioners vs. National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617** where the House of Lords held that the courts below had taken locus standi as a preliminary issue. While there may be several cases where it is appropriate to raise it at the earliest stage, or even in cases of whether there was sufficient interest to support the application, the question of sufficient interest must be taken together with the legal and factual context of the application because the matter before their Lordships included the whole question of statutory duties of the revenue and a breach or failure of those niches of which the federation complained. Furthermore the court made the reference to the expression "a person aggrieved" who has sufficient interest to apply for the prerogative writs of certiorari and mandamus. It was held in one of the authorities that the remedy is not confined to parties before the lower court but extends to any person aggrieved and even to any stranger.

The Respondents Counsel submitted that in modern jurisprudence the issue for determination is no longer on the definition of an aggrieved party but whether he or she has sufficient interest under the law has developed beyond the cases relied upon by the Applicant's Counsels. In the *Decision of Hon. Mr. Justice Christopher Madrama Izama* *^*~ *&*\$\$# xtra+
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premises he submitted that the Respondent has locus standi as a taxpayer to challenge the acts of the Applicants and Uganda Revenue Authority.

On the question raised by the court as to whether the authorities did not deal with the judicial review rather than an application for review, the Respondents Counsel relied on the judgment of Hon. Justice Godfrey Kiryabwire in **Kikungwe Issa, Salaamu Musumba and Others vs. Standard Bank Investment Corporation and others HCMA No. 0394 of 2004 and 0395 of 2004 arising from HCCS 0409/2004**. In that case the Applicant applied by notice of motion under articles 126 of the constitution the Republic of Uganda, section 33 of the judicature act, section 98 of the civil procedure act and order 48 rules one and three of the civil procedure rules to restrain the first, second and third Respondents or their agents from selling, transferring or otherwise disposing of land. The court considered the issue of locus standi derived from article 17 of the Constitution. The Applicants were asserting their constitutional duty under article 17 of the 1995 Ugandan Constitution to protect and preserve public property and they claimed that the property was public property. At pages 18 and 19 the court considered the issue of locus standi of the Applicant under article 17 of the Constitution. Honourable Justice Kiryabwire noted that with regard to public law, the rules relating to locus standi have been relaxed. He quoted from a number of authorities to demonstrate that there is a more liberal approach to standing on the part of the courts in modern times. The simple test for standing in all public law cases is that of "sufficient interest". The real question being whether the Applicant can show some substantial default or abuse and not whether his personal rights or interests are involved. With reference to the case of **Chandrika Prasad versus the Republic of Fiji and the Attorney General of Fiji HCB 0217 of 00L the High Court of Fiji** among other things noted that the Applicant must show that the issues raised for decision are sufficiently grave. Secondly, the issues are also sufficient public importance and thirdly they involve high constitutional principle.

With reference to the Applicants application and the procedural question as to whether the Applicant could have sought for judicial review, it is not the appropriate application. One cannot bring an application to quash the decision of the High Court judge. One can bring an application under article 50 of the Constitution for human rights violation. The Applicant could not move under article 137 of the Constitution for a declaratory order of infringement of the Constitution. The Applicant is not seeking for any constitutional interpretation. The Applicant simply moved court to challenge the waiver of taxes on the ground that Uganda Revenue Authority did not have the mandate to do so.

With reference to objection to the submission by the Applicant's Counsel on the ground that the Respondent's Counsel was going into the merits of the application, the Respondent's Counsel submitted that he was demonstrating that the issue of locus standi cannot be determined or argued in the abstract and the grounds of grievance have to be shown.

The Respondent's Counsel reiterated submissions that his client's pleadings have not been challenged and the raise substantial questions that give him locus standi to be heard which standing cannot be challenged preliminarily but has to be considered to determine whether he has sufficient interest as a taxpayer to challenge the consent judgment. The Respondents Counsel emphasised that the court should look at the modern jurisprudence and move away from the restrictive tests in the definition of "person aggrieved" and considered the right of the member of the public to challenge an authority that is violating the law.

In rejoinder Counsel Masembe with reference to the case of **Inland Revenue Commissioners versus National Federation of Self Employed And Businesses Ltd** (supra) submitted that it deals with two concepts which ought to be separated. There is a concept of review under direct interest of a person aggrieved and then there is the entirely different concept of judicial review which is based on the prerogative orders available under judicial review in which sufficient interest is the test for locus standi.

He highlighted the prerogative orders/remedies as being available to anybody and made reference to several authorities. The question of sufficient interest is a question of mixed law and fact. It is a question of fact and degree and the relationships that bring the Applicant in the matter to which the application relates. It may be considered at this stage of the application for leave for judicial review or in adding the main application for judicial review. All that the Applicant needs to demonstrate is sufficient interest. In summary, all the authorities cited by the Respondents Counsel, deal with applications for judicial review which is not the matter before the court.

The area of jurisprudence the Applicant relies upon is based on Order 46 of the Civil Procedure Rules as well as section 82 of the Civil Procedure Act. The test for judicial review is entirely different from the test under the above quoted provisions of the civil procedure rules. The case of **Issa Kikungwe and Others** (supra), it is distinguishable. It was an originating application brought in its own right and was not an application for review of a judgment. Generally learned Counsel reiterated earlier submissions that I do not need to refer to for purposes of the preliminary objection to the Respondent's application for review.

Ruling

I have carefully considered the Applicant's objection to the application for review of the consent judgment executed between the Applicants and Uganda Revenue Authority. I have summarised the detailed arguments of Counsel on the issue of whether the Respondent has locus standi. The issue before the court is whether among other things the question of whether the Applicant has locus standi to bring an application for review of the consent judgment between different parties ought to be determined at this stage or should await the determination of the merits and considered as one of the issues.

It is my humble opinion that the question of whether the issue of locus standi can be taken at this stage can be resolved by the simple submission that locus standi is a preliminary issue and relates to the right to file the application at all and ought to be tried as a preliminary point of law. What the Respondent's Counsel raised is the extent of the court's inquiry to establish whether an Applicant has locus standi. Both applications namely the Respondent's application for review of the consent judgment and the Applicant's application currently before the court challenging the locus standi of the Respondent to bring an application for review disclose two approaches to review. The first is the review of a judgment in a simple review which may be under private law and the other is a public law application challenging acts of a Public Authority.

The first approach which is the one preferred by the Applicant's Counsel is to deal with the application according to the wording and the rules under which it is brought as an application for review of a judgment possibly between private persons. For that reason the question of whether the Applicant has locus standi is considered by interpretation of Order 46 rule 1 of the Civil Procedure Rules and section 82 of the Civil Procedure Act. It follows that the Applicant's contention is that the court should be restricted to the jurisprudence springing from interpretation of those provisions. That it should not venture into the grounds of the Respondent's application purporting to challenge the act of the parties to consent to judgment on agreed terms rather than have it determined by law. On the other hand it is apparent that the Respondent's Counsel relies on the wider jurisprudence of a party with sufficient interest approaching the courts to challenge an act of an authority for being unlawful or *ultra vires* or in breach of the law. The common issue being that it is an application to review the act.

In this case the act is the consent agreement resulting in a consent judgment. It may also be considered as the consent judgment itself and either approach has a different result and procedure.

The procedural question raised by the Applicant's Counsel is that an application challenging the authority for any unlawful action or breach of the law has to be an original suit commenced under the broader locus standi of sufficient interest or in the least an application for judicial review (also by an originating motion). On the other hand the contention is that an application for review of a judgment even though it can be made by a third party who was not party to the judgment or proceedings leading to the judgment, can only be entertained in exceptional circumstances. That the court should consider whether this is one of those exceptional circumstances in which a stranger or a third party is considered a person aggrieved or a person considering himself aggrieved by the order of a court of law (Not an act of the statutory authority).

On the above premises the submission of Counsel Mohammed Mbabazi proceeded from the broader approach of locus standi under the major consideration of "sufficient interest" and is different from those of the Applicant. On the first approach I will restrict myself to the issue of

locus standi under Order 46 Rule 1 of the Civil Procedure Rules as well as section 83 of the Civil Procedure Act.

Order 46 rule 1 of the Civil Procedure Rules provides as follows:

“1. Application for review of judgment.

(1) Any person considering himself or herself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the court which passed the decree or made the order.”

The controversy is about the expression under Order 46 rule 1 having the phrase or terms “Any person considering himself or herself aggrieved”. This phrase is the same as that under section 82 of the Civil Procedure Act which provides that:

“82. Review.

Any person considering himself or herself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit.”

Because of the same phrase used, the submissions can proceed under Order 46 rule 1 of the Civil Procedure Rules or Section 82 of the Civil Procedure Act. The phrase “any person considering himself or herself aggrieved” has often been shortened to “person aggrieved”. The statutory provision seems to be subjective by using the expression "any person considering himself or herself" while the expression "person aggrieved" literally gives a more objective test as to who a person aggrieved ought to be. Nonetheless the terms have been used interchangeably in the authorities under consideration in this objection. They have also been mixed in private law

matters as well as in public law. In Uganda section 82 of the CPA and Order 46 rule 1 of the CPR cater for private rights but may, in appropriate cases, apply to public law issues.

The expression “person aggrieved” was considered to mean a person who has been injuriously affected in his rights or has suffered a legal grievance in **Re Nakivubo Chemists [1979] HCB P.12** It was held that the term “any person considering himself aggrieved” under section 82 of the Civil Procedure Act meant a person who has suffered a “**legal grievance**” What then is a “legal grievance”? Is it a grievance by the definition and standard of law? This expression was adopted from the case of **Ex parte Side Botham in re Side Botham (1880) 14 Ch. D 458 at 465** and the judgment of James L.J where he held that:

“the words “person aggrieved” do not really mean a man who is disappointed by a benefit which he must have received if no other order had been made: A person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully affected his title.”

From a reading of the passage the word "disappointed" also imports the subjective test consideration in the phrase. It would follow that the expression "person aggrieved" is not completely subjective but imports an objective test qualified by use of the expression "a person who has suffered a legal grievance". It also suggests that it is a person against whom a decision has been pronounced which wrongfully deprived him of something or wrongfully affected his title. This expression was specifically the subject of comment by Lord Denning in the Privy Council case of **Attorney General of Gambia vs. N'jie [1961] AC P 617 at page 634** where he held that:

“But the definition of James L.J. is not to be regarded as exhaustive. Lord Esher M. R. pointed out in ex parte. Official Receiver in re Reed, Bowen & Company that the words “person aggrieved” are of wide import and not subject to a restrictive interpretation. They do not include of course a mere busy body who is interfering in things, which do not concern him, but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests.”

What is a restrictive interpretation? And who is a mere busy body who is interfering in things that do not concern him or her? Furthermore, is a person considered a person with a genuine grievance because an order has been made which prejudicially affects his interests? Apparently as can be seen from the authorities, the expression "person aggrieved" cannot be restricted to definite categories with sharp definitive lines. That is the import of the holding of Lord Denning. He himself could not exhaust the potential of the definition. Lord Parker C,J, in the case referred to by the Applicants Counsel namely **Ealing Borough Council vs. Jones [1959] 1 All E.R. 286** found it more convenient to give instances of what the expression "aggrieved" is not meant to apply to rather than what it applies to. He repeated the subjective definition that a person aggrieved is not a person who is disappointed or annoyed at the decision with regard to the holding in **R vs. London Court Sessions Ex Parte Westminster City Council (2) [1951] 1 All E.R. 1032** per judgment of Lord Goddard C.J. Secondly, a prosecutor was never a person
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aggrieved in a quasi criminal case when he is annoyed at the finding that what he thought was a breach of the law was not a breach of the law. He concluded that the authority would be a person aggrieved if a burden was placed on them. In other words an order that required them to provide dustbins for instance made the authority an aggrieved person because it by the order would be required to provide dustbins in the place of the owner of the premises. The authority however dealt with an appeal from the decision of a Magistrate by the authority which had served a notice that had been quashed by the magistrate. It was not an application for a review of judgment but an appeal by one of the parties and dealt with the merits of the issue of standing unlike the Applicant's submission on the issue of appropriate parties and applications for review of a judgment.

The case of **Ladak Abdulla Muhammad Hussein vs. Griffiths Isingoma Kakiiza & 2 Others S.C.C.A. No. 8 of 1995** is much more pertinent to the definition adopted by Ugandan Courts. Odoki J.S.C. held that a person who could bring an application under Order 46 rule 1 of the Civil Procedure Rules or section 82 of the Civil Procedure Act (revised laws) is a person who has suffered a legal grievance. He also held that in a suitable case a third party may apply for review "under the inherent powers of the Court". Obviously the conclusion from a reading of the judgment is that it is only a party to the proceedings leading to the order or decree who has standing to apply for a review of the decision. As far as third parties are concerned, a suitable person can apply under the inherent powers of the court. On the other hand his Lordship considered Order 9 rule 9 of the Civil Procedure Rules which he held gives the court unfettered discretion to set aside or vary judgment upon such terms as may be just. The right to move the court is not restricted to parties to the suit or proceedings leading to the order or decree but includes any person who has a direct interest in the matter and who has been injuriously affected.

Going back to the English authorities the case of **R vs. London Sessions Appeal Committee Westminster City Council [1951] 1 All E.R.** also dealt with an appeal against the court of summary jurisdiction varying the decision of the Council to cancel a street trader's licence. The case turned on the wording of section 64 of the **London County Council (General Powers) Act, 1947** which clearly provided that any person deeming himself aggrieved by any conviction or order made by a court of summary jurisdiction under any provision of the Act may appeal to the next practical court of quarter sessions under and according to the provisions of the **Summary Jurisdictions Acts**. The question was whether the reversal of the decision of the Borough Council by the magistrate made the Borough Council a person aggrieved for purposes of **section 64**. They noted that the order did not affect the Council in the manner envisaged by the provision. I agree with the holding that a statute has to be considered in its own context and its wording is important in determining who an aggrieved person under the statute is. For that reason the decision is not very relevant to the circumstances of this case.

Applications for judicial review cannot be compared to applications for review of a judgment because different considerations may in some cases apply. According to **Lord Denning in "The Decision of Hon. Mr. Justice Christopher Madrama Izama** *^*~ *&*\$#\$# xtra+ *maximum735securityx 2017 style*

Discipline of Law London Butterworth's 1979 page 113 the questions being where there is an abuse or misuse of power, who can bring the case before the courts? Can any member of the public come? Or must he or she have some private right of his or her own? He noted that during the 19th century, the courts were reluctant to let anyone come unless he had a particular grievance of his own. But during the 20th century the position has been much altered. In most cases if not all, the individual can come to the courts and will be heard if he has a "sufficient interest" in the matter in hand. However, he noted that the test of a "sufficient interest" is very elusive and was yet to be worked out by the courts. In the subsequent pages Lord Denning traces the history of the expression "person aggrieved" as used in the specific statutes and generally. He noted that in the cases of applications for the grant of certiorari, mandamus or prohibition, the courts of common law when granting the prerogative writs have always kept their options open and left it to the discretion of the court. This seems to be far more to the two-stage process of applications for leave to file a judicial review application and then the consideration of the judicial review itself. It was at the discretion of the common law judge to permit a person to file an application for judicial review. In Uganda this approach has been dealt away with and now any person has a direct right if he or she has sufficient interest to apply for judicial review. This shift in the law seems to be among other things generated by article 42 of the Constitution which guarantees a right to just and fair treatment in administrative decisions. It provides that:

"Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have the right to apply to a court of law in respect of any administrative decision taken against him or her."

Article 42 clearly envisages someone against whom a decision has been made. It also envisages somebody who appears before any administrative official or body and guarantees the right to be treated justly and fairly and incorporates for instance the rules of natural justice such as the right to be heard, the principles of impartiality etc. Fair hearing is further guaranteed by article 28 of the Constitution and entrenched by article 44 which provides that there shall not be any derogation from that right. In such cases an aggrieved person has a direct right to apply for review of any decision and does not need to convince a common law judge to do so. The right to apply for review is a constitutional right. Leave to apply is not at the discretion of the judge who determines among other things whether the intending Applicant has sufficient interest or is an aggrieved person.

For that reason the submissions of Counsel Muhammad Mbabazi, Counsel for the Respondent deals with the determination of a right to file public interest litigation rather than the restrictive applications for review of any judgment as a general statement. According to **H.W.R. Wade in Administrative Law Fifth Edition at page 583**, prerogative remedies are of a public character and anybody can apply for it. Any member of the public who has been inconvenienced or a particular party or person who has a particular grievance of his own can apply. If the application is made by, what for convenience one may call "a stranger", the remedy is purely discretionary. *Decision of Hon. Mr. Justice Christopher Madrama Izama* *^*~ *&*\$\$# xtra+
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Where it is made by a person who has a particular grievance of his own, whether as a party or otherwise, the remedy lies *ex debito justitiae* (meaning a remedy which the Applicant gets as a right such as a writ of habeas corpus (See Osborn's Concise Law Dictionary 11th Edition page 174)). H.W.R Wade (*supra*) summarises the position between pages 619 and 620 of his book. The expression "any person aggrieved" developed over time from a restrictive interpretation to a wider one and was used to define standing for obtaining certiorari and prohibition.

From the above authorities the conclusion is that the expression "any person aggrieved" as used in the common law and the various authorities does not cover public interest litigation as currently embodied in the Ugandan Constitution. Secondly, the Respondent's application which purports to be an application for review is procedurally incorrect as public interest litigation. The third point is that there is no specific procedure provided for challenging a consent judgment which by its definition is an agreement between the authority (Uganda Revenue Authority) and some private companies/taxpayers (the Applicants to this application) on a matter of taxation of a taxpayer. The nature of the application of the Respondent as currently framed is a public interest action meant to challenge the activities or specific action of Uganda Revenue Authority.

The objection of the Applicant is an objection to the procedure and cannot deal with the substance of the application as clearly suggested by the Applicant's Counsel himself. It merely challenges the procedure used to bring the application. Locus standi on the other hand should deal with the substantive right of any person to be heard in a court of law for the alleged grievance. The procedural question as to the form taken by the application is a technical issue and does not deal with the substance of the Respondent's suit. Specifically, it is my considered opinion that the substance of the Respondent's application is a challenge to the act of Uganda Revenue Authority of entering into an agreement embodied in a consent judgment which allegedly waived some taxes imposed by law and upheld by the Tax Appeals Tribunal. I wholly agree with the Applicant's Counsel to the extent that it is the wrong procedure to adopt because like held in **Ladak Hussein** (*supra*) by the Supreme Court of Uganda, in ordinary cases the Respondent's remedy was to apply for judicial review if he had suffered a legal grievance. A legal grievance has been given an objective test. I also agree that at this stage of the proceedings I cannot determine the question of whether the Respondent has sufficient interest to bring a public interest litigation alleging breach of law by Uganda Revenue Authority. This leads me to the conclusion that the Respondent's Counsel did submit on the correct approach to the effect that the court as far as the substance of the Respondent's application is concerned, should not determine whether the Respondent has sufficient interest at this preliminary stage. To do so would be dealing with the procedural question as to whether the Respondent can bring an application for review of the consent judgment firstly because he is not a party and secondly whether he has "sufficient interest" or whether he is "an aggrieved person" by the order. If I am to consider whether he is an aggrieved person by the order, he obviously did not have an order made against him. Secondly, to consider whether his rights are injuriously affected would lead to

a far-fetched conclusion either way as to whether those taxes may have had an impact on him or whether the loss of tax by waiver injuriously affected his interest. The crux of the issue is the submission of the Respondent's Counsel that the Applicant is alleging breach of law by the authority concerned. That is the long and short of the application. Breach of law can arise in any action of a public authority. The action challenged in the application is that of entering into an agreement with the Applicants to this application by Uganda Revenue Authority. The authority of Uganda Revenue Authority to enter into the agreement is being challenged. It is alleged that URA does not have the statutory authority to waive tax of a tax payer. It is also alleged that taxes can only be imposed by law and cannot be waived except by an authority empowered by law.

As far as the substance of the application is concerned, the allegation raises points of law as to the acts of the Uganda Revenue Authority. Touching briefly on the question of standing, the authorities are clear about the standing of a member of the public. The general rule is that a citizen may move court for declarations that the actions of a public authority are *ultra vires* and affect the rights of citizens. A member of the public may come to court to ensure that the law is enforced or upheld according to Lord Denning in **Attorney General versus Independent Broadcasting Authority [1973] ALL ER 689** where he held at page 699 that:

“I have said so much because I regard it as a matter of high Constitutional principle that if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way that offends or injures thousands of her majesty's subjects, then in the last resort any one of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced.”

Lord Denning held that this gives any member of the public a right to come to a court of law to challenge the authority and restore the law. The Respondent in this case alleges that he wants the rule of law upheld according to his duty as a citizen which duty is imposed on him by article 8 A and 17 (i) of the Constitution. Lord Denning further held in the case of **Reg vs. G.L.C. Ex p. Blackburn [1976] 1 WLR 550** that a tax payer has locus standi to approach court where breach of public law is being committed and seek intervention. In that case, Mr. Blackburn filed a case in court alleging that pornographic films were being filmed in London and elsewhere and that such showing of grossly indecent films was an offence against the common law of England. Lord Denning had this to say at pages 558 H – 559 A:

“It was suggested that Mr. Blackburn has no sufficient interest to bring these proceedings against the G.L.C. It is a point, which was taken against him by the Commissioner of Police... Who then can bring proceedings against when a public authority is guilty of misuse of power? Mr. Blackburn is a citizen of London. His wife is a ratepayer. He has children who may be harmed by the exhibition of pornographic films. If he has no

sufficient interest, no other citizen has. I think he comes within the principle, which I stated in McWhirter's case...

Breach of law by a public authority is actionable. The question here is not the enforcement of fundamental right or freedoms of another person or group under article 50 or the declaration of breach of Constitutional provisions by the act or omission of a public authority under article 137. The Respondent alleges that article 17 (i) of the Constitution of the Republic of Uganda confers on him a duty as a citizen to combat corruption and misuse or wastage of public property. The question of whether the waiver of taxes is corruption, misuse or wastage of public property is a question on the merits and cannot be determined on the grounds of the challenge to the locus standi of the Respondent to bring the action where it may be proved or disproved. How does the Respondent exercise such a duty? While I was referred to state directive principle 29 which also lists the duties of the citizen, other state directive principles may be considered. Objective number 29 provides that it shall be the duty of every citizen to promote democracy and the rule of law. Objective number 26 deals with the principle of accountability. It provides that all lawful measures shall be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding political and other public offices. I may not consider at this stage whether there was any misuse of power by Uganda Revenue Authority in entering the consent judgment. That is a matter on the merits and I agree with the Applicants Counsel on that point. Finally this court has applied article 17 in the case of **Kikungwe Issa, Salaamu Musumba and 3 Others vs. Standard Bank Investment Corporation, Stanbic Bank and 2 Others High Court Miscellaneous Application No 0394 of 2004 & 0395 of 2004 arising from HCCS No. 409 of 2004**. Particularly honourable Mr. Justice Geoffrey Kiryabwire at page 23 of his judgment held that article 17 is silent on how the duty of the citizen is to be carried out. In his view it granted the citizen wide latitude of choice. He could elect to go to the IGG or police as suggested. Such an election may lead to a legal action in court.

In my opinion if there is to be a legal action in a court of law, then the other question to be considered is what procedure should be followed. Before delving on that, my conclusion of the matter is that the objection raised is clearly one of procedure and not substance. The conclusion is that a wrong procedure does not affect the inherent jurisdiction of this court. What is material is that the Applicant brought the substance of the application and the Respondent had an opportunity to respond to it. Secondly both parties have a right to be heard and the court has jurisdiction in the matter. The wrong procedure can be corrected because it is a question of form and not of substance. This was the holding of the East African Court of Appeal sitting at Nairobi in **Boyes vs. Gathure [1969] 1 EA 385** though at the appellate level. They considered whether the appellant has suffered any prejudice by failure to follow the right procedure. Spry JA who delivered the judgment of court noted that procedure by way of summons may be originating or interlocutory and when s. 57 of the Registration of Titles Act speaks of applying "by summons",

it means by originating summons, if there is no suit in existence, or by interlocutory summons, if there is.

“The more difficult question, I think, is whether the adoption of the wrong procedure invalidates the proceedings, but in my opinion it does not. I would make it clear that I think the learned judge was entitled to reject the application and, indeed, should have done so. In many cases where an incorrect procedure has been adopted it is possible to remedy the error by permitting amendment, but the procedure on an originating summons is so different from that on an interlocutory summons that I doubt if amendment would have been proper. There is, however, no need to decide that, since no application for amendment has been made at any stage.

So far as this appeal is concerned, however, the position is that the learned judge made an order which he certainly had jurisdiction to make on a proper application, and I do not think that the fact that the application was in an incorrect form meant that he lacked jurisdiction. If, as I think, he had jurisdiction, the error of procedure is not a ground for interfering with his decision, since no prejudice whatever was caused to the appellant (see rule 77 of the Eastern African Court of Appeal Rules 1954).”

This decision was reported in 1969 and the issue of wrong procedure has been decided under the new Constitution of the Republic of Uganda 1995 under the shadow of article 126 (2) (e) which commands the administration of substantive justice without undue regard to technicalities. In **Saggu vs. Roadmaster Cycles (U) Ltd [2002] 1 EA 258** the Court of Appeal of Uganda in the lead judgment read by Mpagi – Bahigeine J.A. considered the citation of the wrong law as to whether it was fatal to the proceedings:

“The general rule is that where an application omits to cite any law at all or cites the wrong law, but the jurisdiction to grant the order sought exists, then the irregularity or omission can be ignored and the correct law inserted. In *Nanjibhi Prabhudas and Company Limited v Standard Bank Limited* [1968] EA it was held:

“The court should not treat any incorrect act as a nullity with the consequence that everything founded thereon is itself a nullity unless the incorrect act is of a most fundamental nature. Matters of procedure are not normally of a fundamental nature”.

The Supreme Court also emphasized in *Re Christine Namatovu Tebajjukira* [1992-93] HCB 85 thus:

“The administration of justice should normally require that the substance of disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from the pursuit of his rights”.

It is therefore clear that failure to date an affidavit or cite the correct law or any law at all are mere errors and lapses which should not necessarily debar an application from proceeding.

All these omissions were corrected in the course of the hearing and the Learned Judge commented on them in his ruling.”

Finally whenever the constitution gives a right of action but Parliament or the Rule making authority has not enacted any law to prescribe the procedure, the courts can be approached by any procedure by which the court can be moved. This is the situation here and as was held in **Kikungwe Issa** (Supra) that article 17 of the Constitution gives the citizen wide latitude as to how to exercise the duties specified under the article. The failure to prescribe procedure on how to approach the court in constitutional grievances was considered in the case of **Juandoo vs. Attorney General of Guyana (1971) AC 972** at pages 982 – 983. In that case Parliament has not prescribed any rules as commanded by the Constitution for the enforcement of fundamental rights and freedoms. On application by the Appellant for enforcement of her right to compensation a preliminary objection was raised to her petition on the ground that no procedure was available to approach the court and the objection was overruled when the court held that:

“...the clear intention of the Constitution that a person who alleges that his fundamental rights are threatened should have unhindered access to the High Court is not to be defeated by failure of Parliament or the rule making authority to make specific provisions as to how that access should be gained”.

In **Attorney General vs. Ali & Ors (1989) LRC 474** pages 525 – 526 Harper J.A also held that:

“... a citizen whose Constitutional rights are allegedly being trampled upon must not be turned away by procedural hiccups. Once his complaint is arguable, a way must be found to accommodate him so that other citizens become knowledgeable of their rights ...”

The court has a duty to lend its processes to the exercise of the mandate of the citizen to exercise his or her duty and failure to bring the application by way of judicial review or by way of a plaint should not prejudice the Applicants who have an opportunity to defend the consent judgment on any grounds that they may have. The citation of Order 46 rule 1 of the Civil Procedure Rules for that reason could, if held to be erroneous, be a procedural error and the correct rule may be inserted. Finally is an application to set aside a consent judgment under a public interest cause, a wrong procedure? The question of procedure to set aside a consent judgment arose in **Brooke Bond Liebig (T) Ltd v Mallya [1975] 1 EA 266** in the Court of Appeal sitting at Dar es Salam. The facts are that the Appellant Company and the Respondent executed a compromise agreement to resolve the suit but subsequently Mr. Mallya through Counsel applied to set aside the consent

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judgment. Mr. Mallya's advocate applied to the court by notice of motion under Order 23 rule 3 of Civil Procedure Code to review and construe an agreement of compromise and direct defendant to pay the sums as directed therein. The trial judge held that the parties did not come into agreement at all as they did not agree on the basis of the purported agreement and set it aside. The company appealed and Law Ag P at 268 noted that the first ground of appeal is that the application to construe the compromise agreement was incompetent and should not have been entertained as it was made under Order 23 rule 3 of the Civil Procedure Code which provides for the recording of compromises, and not for the review of a compromise which, as in that case was made an order of the court. He held that:

"I agree that the application was made under the wrong order. Even if procedure by separate suit is the proper procedure, and I am not convinced as to this, a court is not precluded from giving effect to its decisions under its inherent powers, especially where time and expense can be saved."

The court further cited with approval its earlier decision in **Mawji v Arusha General Store [1970] 1 EA 137** at page 138 where Sir Charles Newbold P who read the judgment of the court considered the effect of failure to follow the correct rules of procedure and held:

"We have repeatedly said that the rules of procedure are designed to give effect to the rights of the parties and that once the parties are brought before the courts in such a way that no possible injustice is caused to either, then a mere irregularity in relation to the rules of procedure would not result in vitiation of the proceedings. I should like to make it quite clear that this does not mean that the rules of procedure should not be complied with – indeed, they should be. But non-compliance with the rules of procedure of the court, which are directory and not mandatory rules, would not normally result in the proceedings being vitiated if, in fact, no injustice has been done to the parties."

It may be true that a consent judgment can be set aside by an ordinary suit challenging the legality thereof. Why cannot it be challenged in an application brought by a third party for review of the decree which is the result of an agreement as a public interest litigation challenging the power of the authority to make the agreement? A contract can be challenged for illegality and where it involves a member of the public alleging illegality of a public authority to execute it should it fail on grounds of the narrow scope of the cited rule? If they have standing in an ordinary suit, or in application for judicial review then the issue having proceeded for review under Order 46 rule 1 of the Civil Procedure Rules is one of procedure and not on the substance. In any form of suit the intention would be to advance grounds to challenge the order or judgment of the court entered by consent of the parties. The actual grievance is the agreement of the parties. A consent judgment is an agreement of the parties according to the authorities. In the case of **Purcell vs. F C Trigell Ltd (trading as Southern Window and General Cleaning Co) and another [1970] 3 All ER 671 at 676** Buckley L.J held at page 366 as follows: "On the

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question of the contractual effect of an agreed order relating to some procedural matter in an action, I can see no valid distinction in principle between a consent order of that nature and a consent order of a final nature.” In other words it was an agreement between the parties with a contractual effect. In **Huddersfield Banking Co. Ltd vs. Henry Lister & Son Ltd (1895) 2 CH D 273** Lindley L. J held at page 280 that the consent order is based on a contract between the parties when he said:

“I have not the slightest doubt that a Consent Order can be impeached, not only on the ground of fraud, but upon any ground that would invalidate it. It is expressed in a more formal way than usual. ...To my mind the only question is whether the agreement upon which the Consent Order was based can be invalidated or not. Of course if that agreement cannot be invalidated the Consent Order is good. If it can be the Consent Order it is bad.”

I agree and therefore the question is whether the agreement on which the consent order is based can be invalidated.

The Respondent’s grievance is the existence of the decree which altered the way the taxes are to be collected and which is based on an agreement of Uganda Revenue Authority. The locus standi of the Respondent is in the allegation that the authority acted illegally or without authority in executing the consent judgment. I must emphasise that a consent judgment is not in the strict sense a judgment on the merits but the agreement of the parties embodied in an order. It can be challenged for alleged illegality. The question of who can challenge it on grounds of breach of law is easily answered in public interest litigation.

In the premises the Applicants preliminary objection on the ground that the Respondent has no locus standi to file High Court Miscellaneous Application No. 137 of 2017 lacks merit and the formal application of the Applicant in furtherance of the objection stands dismissed with costs. By the same token the objection embodied in the application and submissions is overruled.

Ruling delivered in open court on 12th May, 2017

Christopher Madrama Izama

Judge

Ruling delivered in the presence of:

Counsel Masembe Kanyezi appearing jointly with Counsels Oscar Kambona and Timothy Lugayizi for the Applicants.

Counsel Mohammad Mbabazi for the respondent is absent

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Respondent Mr. Jackson Wabyona in court

Barbara Nabuweke and Christian Kasibayo Legal and Compliance Officers of the Applicants present in court

Charles Okuni: Court Clerk

Julian T. Nabaasa: Research Officer Legal

Christopher Madrama Izama

Judge

12th May, 2017