

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MUGASHA, J.A., KITUSI, J.A And MDEMU, J.A.)

CIVIL APPEAL NO. 315 OF 2020

HASSAN SALEHE NDENGENYU,

GUSTAV D.K. MIHANJO AND 87 OTHERS.....APPELLANTS

VERSUS

DIRECTOR GENERAL, EXPORT

PROCESSING ZONES AUTHORITY.....1ST RESPONDENT

PERMANENT SECRETARY, MINISTRY OF LANDS

AND HUMAN SETTLEMENT DEVELOPMENT.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

**(Appeal from the Decision of the High Court of Tanzania (Land Division) at
Dar es Salaam)**

(Mgaya, J.)

dated the 2nd day of September, 2016

in

Land Case No. 396 of 2015

.....

JUDGMENT OF THE COURT

14th & 30th August, 2023

MDEMU, J.A.:

The appellants, who were residents of Shimo la Udongo area at Kurasini, sued the three respondents herein in the High Court of Tanzania (Land Division) at Dar es Salaam for compensation and allocation of alternative plots following acquisition of plots of land they occupied by the

Government of United Republic of Tanzania. In 1994, through Government Notice No.54 published in the Government Gazette on 25th of January, 2002, the Government declared Kurasini a development area thus calling for relocation of the appellants to pave way for the intimated development. In resisting the claims through a written statement of defence (WSD), the respondents also filed a notice of preliminary objection to the effect that:

This matter was instituted before this honourable court without observing the provisions of Order I, Rule 8 of the Civil Procedure Code.

In principle, Order I Rule 8 of the Civil Procedure Code, Cap.33 (the CPC) requires institution of a representative suit to be preceded by leave to file such a suit. In this therefore, parties were heard on the preliminary objection and in the end, the said preliminary objection was sustained resulting to dismissal of the entire suit with costs. This was on the 2nd September, 2016. Aggrieved by the dismissal order, the appellants preferred the instant appeal premised on the following grounds of appeal:

- 1. That, the learned trial Judge erred in law and fact by dismissing the case even against Gustav Mihayo and*

Hassan Ndengenyu, without affording them an opportunity to be heard.

2. That, the learned trial Judge erred in law by not finding and holding the duty to give notice to other plaintiffs was on the honorable court but at the expense of the plaintiffs.

3. That, the learned trial Judge erred in law and fact by not appreciating plausible reasons advanced by the counsel for the appellants during hearing of the preliminary objection.

Before us on 14th August, 2023 appeared Mr. Thadei Hyera learned Advocate representing the appellants and Mr. Charles Mtae and Ms. Victoria Lugendo both learned State Attorneys for all the respondents arguing the appeal.

Submitting in support of the appeal, Mr. Hyera was very brief. He referred us at page 17 of the record insisting that, leave to file a representative suit was granted by the High Court of Tanzania, Dar es Salam Registry prior to institution of a representative suit. He thus faulted the

learned trial Judge for dismissing the suit for want of leave. He concluded his brief account by urging us to allow this appeal and make an order for the trial court to determine the said suit on merits.

On his part, Mr. Mtae did not resist the appeal. His stance in support of the appeal hinged on one ground submitted by Mr. Hyera that, leave to file a representative suit was sought and obtained by the High Court prior to the institution of a representative suit by the appellants herein. Mr. Hyera had no rejoinder.

We have carefully gone through unanimous arguments of both counsel in support of the appeal and the entire record of appeal. As alluded to, the trial court dismissed the suit filed by the appellants because no leave was obtained from the High Court prior to the filing of the representative suit. At page 97 of the record regarding this assertion, the learned trial Judge made the following observation:

"I have perused the records and pleadings filed before this court, and I could find no leave granted to the plaintiffs to authorize them to institute this suit under representative capacity."

The High Court was minded so being the dictates of Order I, Rule 8 of the Civil Procedure Code, Cap. 33 (the CPC) which is reproduced hereunder for ease of reference:

8.-(1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested; but the court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

(2) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the court to be made a party to such suit.

This being the legal position, the question which is of interest to us is whether Land Case No.396 of 2015 was instituted in the High Court of

Tanzania (Land Division) at Dar es Salaam without leave to file a representative suit. We will resolve this issue in the course of determining the first ground of complaint. In response to this, both counsels were at one that, it was not justified for the trial court to dismiss the suit for want of leave to file a representative suit in circumstances where leave was sought and granted.

Our perusal of the record of appeal, particularly at page 17 referred to us by Mr. Hyera reveals that, the High Court of Tanzania (Land Division) at Dar es Salaam granted leave to the appellants to file a representative suit on 23rd November, 2015. It was in Miscellaneous Land Application No.690 of 2015. On that stance, it is our considered view that, as there was leave to file a representative suit, the appellants met the underlining principles prescribed under Order I, Rule 8 of the CPC, thus their representative suit was wrongly dismissed by the trial court.

It is upon this understanding that we allow this appeal and remit the record to the trial court with direction that the High Court of Tanzania (Land Division) at Dar es Salaam determines on merits Land Case No.396 of 2015 between the parties. Since this ground alone has disposed the whole appeal,

we do not find it useful to deliberate on the remaining grounds of appeal.

Parties to bear own costs of the appeal.

DATED at **DAR ES SALAAM** this 30th day of August, 2023

S. E. A MUGASHA
JUSTICE OF APPEAL

I.P. KITUSI
JUSTICE OF APPEAL

G. J. MDEMU
JUSTICE OF APPEAL

This Judgment delivered this 30th day of August, 2023 in the presence of Mr. Stanley Mahenge, learned State Attorney for the 1st, 2nd, and 3rd Respondents, also holding brief of Mr. Thadei Hyera, learned Counsel for the Appellants is hereby certified as a true copy of the original.




R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL