

IN THE HIGH COURT OF TANZANIA

AT DODOMA

MISC LAND CASE APPLICATION NO. 20 OF 2014

EDWARD JOSEPH MPALI & OTHERS..... APPLICANTS

VERSUS

CAPITAL DEVELOPMENT AUTHORITY .....RESPONDENT

RULING

6/9/2016 & 14/11/2016

A. MOHAMED, J.

The applicants are among 80 residents of Miganga area now known as Chidachi area within Dodoma Municipality whose properties were surveyed by the respondent and then granted to new occupiers. They are seeking leave to institute a representative suit against the respondents under **Order 1 Rule 8 (1)** of the **Civil Procedure Code [Cap 33 R.E 2002]**. The provision reads:

*"Where there are numerous person having the same interest in one suit, one or more of such person 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 person 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."*

Both parties agreed to dispose of the application by way of written submissions.

Submitting in support of the application, the applicants argued the above provision has the following three elements; there ought to be numerous person; they must have a common interest and; they must seek permission of the court to institute the suit. They relied on **Kiteria Menezes and others V. Area Engineering Works Ltd. & the Attorney General [1998] TLR 434** as well as **Lujuna Shubi Ballonzi Senor V. Registered Trustees of Chama cha Mapinduzi [1996] TLR 2003**. In essence, they submitted, both cases stress a representative suit cannot be instituted unless one complies with all the mandatory provisions of **Order 1 of Rule 8 of the Civil Procedure Code**.

In resisting the application, the respondent argued that the applicants have failed to state what their claim is against the respondent according to paragraph 2 of their submission. He added that merely having properties at Kikuyu does not mean the applicants have the same interest in one suit. He was of the view the applicants have failed to show how a similarity of interest over the respondent arises and supported his argument with **"Sarkar on the**

**Code of Civil Procedure, 10<sup>th</sup> Edition, Reprinted 2005, Vol. 1, Wadhwa & Company where at page 749** interest has been defined as to imply joint and inseparable interest even if arising from the same act or transaction. He clarified this interpretation is from **Order 1 Rule 8** of the **Indian Civil Procedure Code** that is in *pari materia* with our **Order 1 Rule 8 (1)** of our **Civil Procedure Code**.

He was therefore of the view the applicants do not have joint and inseparable interest although their claims may have arisen from the respondent's same act. It was his argument that since the applicants have failed to establish having the same interest over the suit land then the suit should be dismissed. He went on say who alleges must prove.

The respondent further argued the applicants have failed to prove they exist and he relied on **Director, Rajani Industries Ltd Vs. Ally Kanuwa & 25 others, Civil Appeal No. 98 of 2009**, (unreported) which inter alia, held that before granting leave to sue in a representative capacity, the court must satisfy itself that the complainants do exist and have been duly mandated their representative to sue on their behalf. It was the respondent's claim there is no proof of the existence of numerous applicants as the **Annexure** marked "**Miganga 1**" listing names of residents does not collate to the applicants allegations in paragraph 2 of their affidavit. He was of the view that the annexure marked "**Majina ya Mahudhurio**", does not mention they are residents of **Miganga** Area



whose properties were surveyed by the respondent. He also attacked the Annexure marked "**Miganga 2**" with minutes titled "**Muhtasari wa baadhi ya wananchi wa kitongoji cha Miganga kilichofanyika tarehe 20/12/2013**" which he said was the applicants' alleged proof of a meeting to choose the applicants as representatives in the suit. He said it did not have names of attendees. Finally he urged this court to dismiss the suit as the applicants have failed to show how **Order 1 Rule 8(1)** supports their application.

In their rejoinder submissions, the applications reiterated they met all conditions in **Order 1 Rule 8 (1)** of the CPC. They further argued the respondent contravened **section 3 (d) of the Land Act [Cap 113 R.E 2002]** which required the respondent to compensate their surveyed land. In essence, they said their claim is on compensation of their appropriated lands.

As to the claim of their lacking the same interest, they submitted that they have the same and common claim against the respondent which is compensation. They filed the present suit after their attempts to be compensated proved futile.

In countering the respondent's allegation that they do not exist, the applicants pointed out their four annexures to their affidavit filed in court on 24/2/2014 wherein they prayed the same be regarded as part of their application. As to their mandate to sue, the applicants referred this court to Annexure "**Miganga 2**" which they said are the

minutes of the meeting which chose and mandated the representatives to file the present suit. They concluded by stressing the representatives were duly mandated to file the instant suit.

After hearing the parties' contentions and upon reviewing the record, I will from the outset, state the applicants' merit my acceptance.

As was ably argued by the applicants, **Order 1 Rule 8 (1)** of the **Civil Procedure Code** provides for 3 conditions to be met by prospective litigants before a court grants such an application to wit there ought to be numerous persons, they should have a common interest and seek permission of the court. I am satisfied the applicants are numerous and have a common interest of being compensated for their surveyed parcels of land appropriated by the respondent. The rationale behind institution of representative suit is to avoid a multiplicity of suits that would tax the court as well as the litigants.

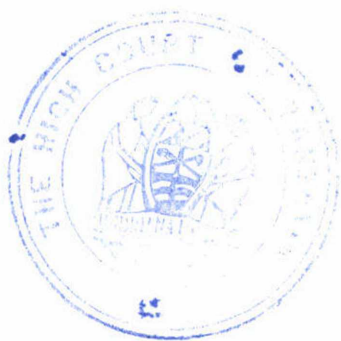
It was the respondent's claim the applicants failed to show a commonality of interest. I think this question was answered in **Sovereign Life Assurance Co. v. Dodd [1892] 2 QB 573 (CA)** which speaking very generally said in order to constitute a class, members belonging to the class must form a homogeneous group with commonality of interest. It further said a group of persons would constitute one class when it is shown that their claims are capable of being ascertained by any common system of valuation.

I am satisfied the applicants have the same interest of seeking compensation of their expropriated lands as against the respondent. If they succeed, their claims can be ascertained by a common system of valuation. Further, their claims are not based on ownership of their separate parcels of land. Had it been so, then the respondent's argument of their lacking the same interest would have held water.

I now turn to the allegation of the applicants being non-existent and that their annexures do not show the representatives were mandated to file the instant suit. Having perused the annexures, I am satisfied that the applicants have proven they do exist and that they chose and mandated the four applicants as their representatives.

In the final, I grant the application with costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Mohamed", is written above the printed name.

**A. MOHAMED**  
**JUDGE**  
**14/11/2016**