

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND CASE NO. 1 OF 2018

(Original intended Land case No. 1 of 2018)

1. SENYAEL AMOS MUSAN	}APPLICANTS
2. JOSEPH LANGAEL NNKO		
3. GODFREY ELIA URIO		
4. ANDREA ARUSULULU NNKO		
5. ELIREHEMA A. NNKO		

VERSUS

THE TRUSTEES OF THE NATIONAL PARKS.....RESPONDENT

RULING

DR. OPIYO, J.

This is a ruling in respect of a point of objection that the current representative suit is not maintainable in absence of leave of the court in terms of order 1 rule 8 of the Civil Procedure Code, Cap. 33 R.E. 2002.

In support of their point of objection Mr. Teophilo Alexander, learned Counsel for the Defendant argued that the plaintiff s filed a representative suit without applying for leave of the court to do so contrary to what is provided by the above provision of Law which requires a representative suit to succeed leave of the court and not vice versa effect. That, representative suit is also filed when notice is given to the respondent

defendant at the expense of the applicant, but the summons which they received was that there is a representative suit which is land case No. 1/2018 which presupposes representative suit has already been filed and leave gotten. On that footing he prayed for the court to dismiss the suit No. 1/2018 as no leave of the court to file the same. Also, if there is application for representative suit, it is dismissed as it won't stand while main suit is already in court. He referred to the case of **Kitere Menezes and 33 others v. Area Engineering works Ltd. and AG. (1998) TLR 335** to substantiate his argument. In that case it was held that, it will be absurd for representative to exist before a representation order has been made.

In reply, Mr. Munuo submitted that, the fact that the case has a number before leave is granted does not mean that the case is already in court to take effect. He thus argued that the case is proper before the court.

Due consideration has been given to the submission of both counsels for the parties. I have gone through the records and came up with the finding that before this court there is a representative suit, Land Case No. 1 of 2018 and an Application for leave to file a representative suit, Misc. Land Case Application No. 10 of 2018. Existence of both matters, purported representative suit and application for leave is quite unusual, as the purpose of the application for leave is seeking for the court order allowing the applicant to file a representative suit. Thus, as correctly argued by Mr. Theophilo the filing of the main, representative suit no 1/2018 presupposes

successful completion of application for leave to file a representative. Therefore, in the case at hand where a suit has been filed before representation order been granted, it becomes incompetent for lack of necessary leave to file the same. And the argument by Mr. Munuo that, the fact that the main case has a case number does not necessarily mean it has already been filed is misconceived as the case is already admitted and recorded in the court Register. In the circumstances the suit has no leg to stand on, it therefore deserve outright deserve struck out as I hereby do with costs.



A handwritten signature in black ink, appearing to be "M. Opiyo", written over a horizontal line.

**DR. M. OPIYO,
JUDGE
22/2/2018**