

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT DODOMA

MISC. LAND APPLICATION NO. 83 OF 2019

PAULO WILSON MADOLE 1ST APPLICANT
SEVELINI YOHANA MALINGA 2ND APPLICANT
BONIPHACE MALUGU SAID 3RD APPLICANT
ESTER BULENZI FALO 4TH APPLICANT
JUMA MASOUD SAID 5TH APPLICANT
BAKARI JUMA OMARY 6TH APPLICANT
MOSES MKONONGO MSINZO 7TH APPLICANT
JULIANA JOHN KALUGULU 8TH APPLICANT
ATHUMANI ALLY MUSSA 9TH APPLICANT
SADI MASOUD HASADI & 171 10TH APPLICANT

VERSUS

DODOMA CITY COUNCIL RESPONDENT

RULING

13th July, 2020 & 13th July, 2020

M.M. SIYANI, J.

In terms of Order I Rule 8 (1) of the Civil Procedure Code Cap 33 RE 2002,
Paulo Wilson Madole, Sevelini Yohana Malinga, Boniphace Malugu Said,
Ester Bulenzi Falo, Juma Masoud Said, Bakari Juma Omary, Moses

Mkonongo Msinzo, Juliana John Kalugulu, Athumani Ally Mussa and Sadi Masoud Hasadi, are in this Court seeking for leave to file a representative suit on behalf of 171 others. Through paragraphs 1 – 6 of the affidavit filed in support of the chamber summons, it has been averred that the applicants are bonafide and legal owners of a piece of land located at Kizota Relini street in Dodoma city which allegedly has been acquired by the respondent without any compensation. According to one Samwel Mcharo who deposed the said affidavit, the applicants share common interests with 171 others who have permitted them to initiate a suit on their behalf.

When the application was called on for hearing on 13th July 2020, Ms Edith Komba who appeared for the respondent, opted against opposing the application, despite prior filing of a counter affidavit. Being uncontested as such, Counsel Joanitha Paul for the applicants merely adopted the contents of the applicant's affidavit and prayed the court to grant the sought leave which will enable the applicants to file a representative suit.

The position of the law with regard to application for leave to file a representative suits is clear; that is, the applicants must establish in terms of Order I Rule 8 of the Civil Procedure Code that there are numerous

persons who shares the same interest in filing or defending a suit: For easy of reference Order I Rule 8 OF THE Civil Procedure Code provides:
Order I Rule 8:

(1) Where there are numerous person 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 plaintiffs 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. [Underlined interest supplied]

My understanding on the above provision is that for leave for filing or defending a suit on behalf of others to be granted to one or more persons, there must be numerous people. These people must have the same interest in one suit. According to Sarkar's commentary on the Code of Civil Procedure 6th Ed, 2017 Vol. 1 at page 1220, the phrase 'same interest' used under order I Rule 8 above, means the following:

If the relief sought is in the nature beneficial to all those represented and to the interest, the interest can be said to be

the same or common interest.' Same interest does not mean identical interest not means interest arising out of the same transaction. [Underlined emphasis supplied]

In this matter, there is no contention as to the presence of numerous people. The applicants claims to own pieces of land located at the same area which has been acquired by the respondent. They claims that none of them has been compensated for such acquisition neither were they informed of the same. In my view and perhaps that's the reason why Ms Komba opted against contesting the same, the applicant's claims reveals presence of the common interest with a group of other 171 persons whose names were appended with the application which is a sufficient ground for granting the applicants the sought leave.

For the reasons above, I find this application meritorious and as such leave to file a representative suit on behalf of 171 people whose names have been appended in the lists of the intended plaintiffs is hereby granted to the applicants. Considering the nature and circumstances of this application, I order costs to be in the cause. It is so ordered.

DATED at DODOMA this 13th Day of July, 2020



M.M. SIYANI
JUDGE