

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

LAND DIVISION

(ORIGINAL JURISDICTION)

LAND CASE NO. 2 OF 2021

ELIAS S/O SAMWEL

FLORA D/O RAPHAEL

JUMA S/O MVINZA & 22 OTHERS



- PLAINTIFFS

VERSUS

KAZURAMIMBA VILLAGE COUNCIL.....1st DEFENDANT

UVINZA DISTRICT COUNCIL.....2nd DEFENDANT

SELEMANI S/O NTIYUMVIGWA3rd DEFENDANT

SIMONI S/O KANANI.....4th DEFENDANT

BAKARI S/O HUSSEIN5th DEFENDANT

GABO S/O HENGA.....6th DEFENDANT

ERASTO S/O NTIRAHU.....7th DEFENDANT

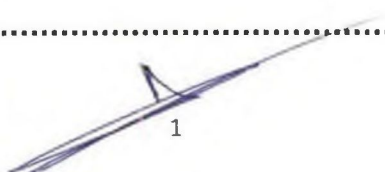
SIMON S/O MBONABUCHA.....8th DEFENDANT

SHABANI S/O SELEMANI.....9th DEFENDANT

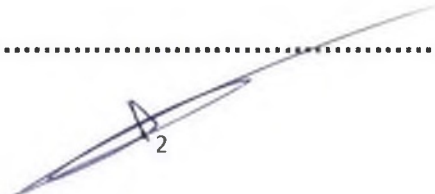
AMOS S/O JOHN.....10TH DEFENDANT

JACKSON S/O CHESSA.....11th DEFENDANT

FIDEL S/O BUTOKE12th DEFENDANT


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BILANGO S/O M. BILANGO.....	13 th DEFENDANT
AMRANI S/O DOGOMA.....	14 th DEFENDANT
NG'OMBO S/O JAMES.....	15 th DEFENDANT
FANUEL S/O DANIEL.....	16 th DEFENDANT
IDRISA S/O BAKARI.....	17 th DEFENDANT
ANASTAZIA D/O MNYULULE.....	18 th DEFENDANT
HUSSEIN S/O MANTA.....	19 th DEFENDANT
HASSAN S/O TUWUNDI.....	20 th DEFENDANT
HERBET S/O MASOGI.....	21 st DEFENDANT
PAMBANO S/O JOSTON.....	22 nd DEFENDANT
MARGET D/O RAFAEL	23 rd DEFENDANT
MADENGE S/O LUTUTYE.....	24 th DEFENDANT
SAID S/O KILEWA	25 th DEFENDANT
MASHAKA S/O JUMANNE.....	26 th DEFENDANT
HAMISI S/O MASHAKA.....	27 th DEFENDANT
WAZIRI S/O HASSANI.....	28 th DEFENDANT
MSIGWA S/O ZULIO.....	29 th DEFENDANT
JOSHUA S/O ISSA	30 th DEFENDANT
JUMANNE S/O MASHAKA	31 st DEFENDANT
NCHABILONDA S/O SADIKI.....	32 nd DEFENDANT
MWAJUMA S/O MGUNDA	33 rd DEFENDANT
MDUA S/O KUWINI.....	34 th DEFENDANT



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AMISA D/O MGUNDA	35 th DEFENDANT
AMON S/O YAMBUGWA	36 th DEFENDANT
CLEMENT S/O DAUD.....	37 th DEFENDANT
HELEMANI S/O MSEMESI	38 th DEFENDANT
HAMZA S/O JUMANNE	39 th DEFENDANT
SEHEYE S/O SHABANI	40 th DEFENDANT
HAMADI S/O SEZA	41 st DEFENDANT
SAID S/O KIDONO KILANDA	42 nd DEFENDANT
JUMANNE HUSSEIN	43 rd DEFENDANT
HUSSEIN S/O MAHUBIRI.....	44 th DEFENDANT
JOELI S/O NKUNGWE	45 th DEFENDANT
LEONARD S/O BIGAMBALALA.....	46 th DEFENDANT
RASHIDI S/O CHONGERA.....	47 th DEFENDANT
TWAHIB S/O KISOLO.....	48 th DEFENDANT
AMRANI S/O MAYANI.....	49 TH DEFENDANT
AMON S/O TANDISE	50 TH DEFENDANT
YUSUFU S/O JILES.....	51 ST DEFENDANT
PASKALE S/O JOHN.....	52 ND DEFENDANT
ATHUMANI S/O CHANGUVU	53 RD DEFENDANT
ABDALA S/O SINDIBABULA.....	54 TH DEFENDANT
JUMANNE S/O NZILIYE	55 TH DEFENDANT
SELINA S/O FEDILI.....	56 TH DEFENDANT

SEBASTIAN S/O MAKORIDO.....57TH DEFENDANT

STANFORD S/O MASOGI.....58TH DEFENDANT

AMOSI S/O MBOGI59TH DEFENDANT

HON. ATTORNEY GENERAL60TH DEFENDANT

R U L I N G

29th & 29th June, 2021

A. MATUMA, J.

This is a representative suit whereas the 1st, 2nd and 3rd Plaintiffs obtained leave of this court vide Misc. Land Application No. 68 of 2020 to represent 22 others. Having obtained such leave on 8/2/2020, they have brought the instant suit claiming ownership of the dispute land. When this suit came for 1st Pre-trial conference, two of the Plaintiffs Bigili Sefania and Juma Saidi Kibuye emerged and complained that their names have been fraudulently used to obtain leave for a representative suit and even to institute this suit as they have no claims whatsoever in the dispute land. They have even disputed their respective signatures in the deed of agreement for a representative suit stating that such signatures were forged by those purported representatives. When I asked the parties to address me on the issue, all of them; Mr. Method Kabuguzi learned Advocate for the plaintiffs, Mr. Ignatius Kagashe learned advocate for the 3rd to 59th defendants, and Mr. Allan Shija learned State Attorney were of

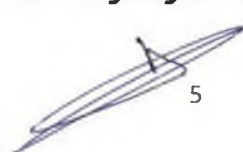


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the view that it is dangerous to continue with the suit without sorting out the real plaintiffs because the final orders of the court would bind the parties. Mr. Kabuguzi learned advocate categorically admitted that he did not verify the plaintiffs as he entrusted the 1st, 2nd, and 3rd Plaintiffs who approached him and he instructed them to convene a meeting and execute the deed of agreement for the intended representative suit.

I agree with the learned brothers that a representative suit cannot stand in the absence of consent of the people sought to be represented. It has been decided as such in a number of cases. Thus, for instance in the case of ***Tenende S/O Budotela and Salamba Ntinginya versus The Attorney General, Civil Appeal no. 27 of 2021*** it was held by the Court of Appeal at Tabora that in the absence of a genuine list of people who are allegedly represented by others is a sufficient ground to vitiate the purported representative suit.

In the circumstances, the list of the plaintiffs before me is not safe to be relied upon nor it was verified by the learned advocate Mr. Kabuguzi as he himself admitted before me. The trend of litigants purporting to use other people's names to litigate is a growing problem in this region. we have in a number of cases faced a similar problem including but not limited to that of ***Daudi Bukenjedeli and others versus Village***



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Council of Mnanila Village, Misc. Land Application No. 53 of 2020. In

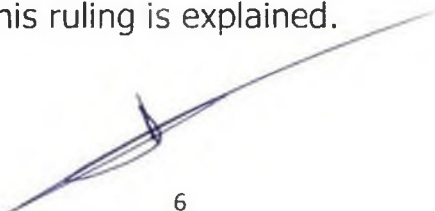
which I had time to rule out;

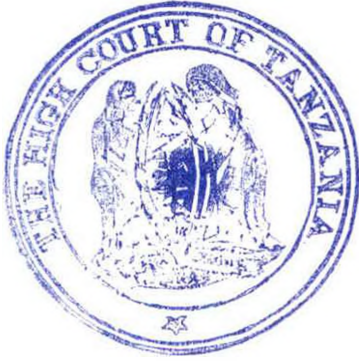
"...it is very dangerous for advocates to act on instructions of third parties to a suit or case without knowledge and consent of the real parties. Parties to the suit or case have to abide with the outcome of the matter. Nobody should be made as an applicant or plaintiff unless himself or his recognized agent so desires".

That being the case, the leave for a representative suit in the instant matter was fraudulently obtained by the 1st, 2nd, and 3rd Plaintiffs. As such this suit is incompetent before this court. No matter that some other Plaintiffs might have been consented for the suit. Sorting of real plaintiffs cannot be done at this juncture provided that the suit itself has already been fraudulently and illegally filed.

The same is accordingly struck out with costs against the 1st, 2nd and 3rd respondents. If the plaintiffs are still eager to pursue any right against the defendants in relation to the alleged cause of action, each must file his separate suit and if need be for consolidation, it shall be determined in the due course. It is so ordered.

Right of appeal against this ruling is explained.

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.



A. Matuma

Judge

29/06/2021

Court: Ruling delivered in chambers in the presence of the 1st, and 3rd Plaintiffs in person and their Advocate Mr. Method Kabuguzi and in the presence of Mr. Allan Shija learned State Attorney for the 1st, 2nd and 60th Defendants and Mr. Ignatius Kagashe learned Advocate for the 3rd to 59th Defendants.


Sgd: A. Matuma

Judge

29/03/2021