

IN THE HIGH COURT OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

MISC. LAND APPLICATION NO. 9 OF 2021

SAULO J. SANGA..... APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF THE CATHOLIC

ARCHDIOCESE OF SONGEA..... RESPONDENT

RULING

28.10. 2021 & 04.11.2021

U. E. Madeha, J.

This ruling arises from the application to lodge a representative suit. The application is made under Order 1 rule 8 of the Civil Procedure Code Cap 33 R.E. 2019 and any enabling provision of the law. The application is supported by the applicant's affidavit. The applicant was represented by Mr. Eliseus Ndunguru, Learned advocate, the respondent by Mr. Lwezaura Kaijage advocate.

The applicant learned advocate Mr. Eliseus Ndunguru, submitted that; The applicant is asking to represent himself and his 233 colleagues. The total number of people he wants to represent with his own will is 234-including the applicant himself. The applicants claim that they are the owners of the existing property at Shipungulu village, Liganga Songea rural area.

The applicant and 233 colleagues claim that the land is their property. They requested that their application be granted with costs.

Mr. Kaijage learned advocate, prayed his counter affidavit to be adopted as part of his submission, and he contended that, this application is meaningless and prayed to be struck out. The applicant has applied to represent 233 people. Few people among them, they did not sign, there is a repetition of names including those who appear with a single name. With the foregoing response of the respondent advocate, the applicant advocate stated that in his rejoinder, he insisted his application to be accepted because numerous people have the same interest on the matter. The remedy they will get is the same, so he asked the court to give them as they asked. Even if they are not granted as prayed for, they will file a suit in their own name.

A representative suit is provided under Order 1 rule 8 of the Civil Procedure Code, Cap 33 (R.E. 2019), which states, *inter alia*:

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 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.

In my opinion, in Annexure P1, a few names out of 234 people have been repeated, few names have got single names without sir names, but most of the names are complete and they have signed. Those few names which have been double registered, not signed, and with single names, if any, should be rectified and included in the list of purported numerous people before the filing of the main suit, subject to the correcting errors of names in the list of the purported numerous people. This is to eliminate the inconvenience of filling out the same type of application by correcting errors that occurred in the past during the filling of the first application. In the case of **Lujuna Shubi Ballonzi Senior versus Registered Trustees of CCM** (1996) TLR 203. This case provides instructions to the

person wishing to represent numerous people in a representative suit as follows:

"The applicant has established a common or same interest; the court must grant leave; the applicant is among the parties in suit; and notice of the institution of the suit must be given to represent a person."

Coming back to the application that preceded me, the applicant presented this application to represent 233 people who want to file the same suit, with the same interest, and based on the same subject matter in one place. I think it's a good thing that Saulo J. Sanga has to be given permission to represent his 234 colleagues, including himself. I agree with the decision in the case of **David Pandakilima, Emiliana Mwingira Januarius versus Principal Secretary Ministry of Land and Human Resources Settlement**, Misc. Land Application No. 428 of 2017. Tanzanian High Court, Land Division, Dar-es-Salaam, the court has observed that:

"The failure to annex a copy of the representative suit does not render the application at hand bad in law. It proceeded from a representative suit."

In the final result, I find that the errors contained in annexure P1 should be rectified, and if such persons are not present, they should be

expunged. In the final result, the applicant applied for the representative suit to represent 234, the applicant inclusive. The prayer is granted. I give no order to costs.

DATED and **DELIVERED** at **SONGEA**, on 04th day of **NOVEMBER** 2021.



A handwritten signature in blue ink, appearing to read "Madeha", is written over a horizontal dotted line.

U. E. MADEHA
Judge
04/11/2021