

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISCELLANEOUS LAND APPLICATION NO. 9 OF 2021

(Originating from Land Case No.2 of 2021)

ISMAIL AHMADI MNAKOLE.....1ST APPLICANT
MOHAMEDI ABDALLAH CHAMPUNGA.....2ND APPLICANT
ALLY ATHUMANI KULOWEKA.....3RD APPLICANT
HASSAN SELEMANI MTAMBALIKA.....4TH APPLICANT
SAID ISMAIL MWAVA.....5TH APPLICANT
ABDALLAH AJALI HEMED.....6TH APPLICANT
MARIAMU YUSUFU MTAMBALIKA.....7TH APPLICANT
OGA SAID OGA.....8TH APPLICANT
SOFIA LITIMBA.....9TH APPLICANT
FIKIRA HAMISI NALYANGA.....10TH APPLICANT

VERSUS

NALIENDELE COLLEGE

OF AGRICULTURE (MATT).....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

26th Oct. & 2nd Nov., 2021

DYANSOBERA, J.:

The ten applicants herein, by a chamber summons filed on 13th day of April, 2021, have filed this application under Order XXXVII rule 1 (a) and Sections 68 and 95 of the Civil Procedure Code [CAP 33 R.E.2002] and any other enabling provisions of law, craving for the following:-

1. That this Honourable Court may be pleased to issue an interim injunction order restraining all respondents, their agents or any one acting on their behalf from auctioning, trespassing to the said disputed property lands or dealing with it in any manner whatsoever pending hearing of this application and final determination of the main application.
2. Costs of this application to be provided for.
3. Any other relief this Honourable Court may deem fit and just to grant.

The application has been opposed by the two respondents above who, apart from filing a joint counter affidavit, have raised a preliminary objection on two points. One, that the applicant has no legal limbs to represent and swear affidavit on behalf of others contrary to Order I rule 8 (1) and rule 12 (1) and two, that the applicants sue the 1st respondent who is incapacitating to be sued or sue.

The hearing of this preliminary objection was conducted by way of written submissions. Mr. Ayoub Rashid, learned State Attorney, submitted in support of the preliminary objection whereas the ten applicants, according to their joint submission filed on 7th day of September 2021, opposed the respondents' preliminary objection.

Supporting the first limb of preliminary objection, learned State Attorney contended that this application does not fulfill the requirements of O. I rule 8 (1) of the Civil Procedure Code in that it is not established that Ismail Ahmed Mnakole was authorised by others to institute this application on their behalf and that no document has filed to that effect. It was further submitted for the respondents that in an application where there are more than one applicant all names of the applicant must be mentioned and so identified. He said that reference to the rest others is insufficient. He reasoned that it is significant that it be known who those persons moving the court and are by their names and who are likely to bear consequences of court's decision. The respondents relied on the case of **Judicate Rumishael Shoo and 64 others v. the Guardian Ltd**, Civil Application No. 43 of 2016 (CAT). The learned State Attorney mentioned other reason for mentioning the names to be their readiness to be represented, to be identified if they are alive, existent or non-fictitious, to establish

authorization and to be recognized as the one ready to bear the consequences or outcome of the court's decision.

On the 2nd limb of the preliminary objection, it was submitted for the respondents that the 1st respondent has not capacity to sue or to be sued and therefore, the suit is against a non-existent party is a nullity as no effective degree can be passed against a non – legal entity. The learned State Attorney explained that Naliendele College of Agriculture MATT cannot be sued as it is under the Permanent Secretary, Ministry of Agriculture.

In opposing the preliminary objection, the applicants have filed a written submission in which their main argument is that the application presented by applicant before this court is not a representative suit but a suit between these ten (10) plaintiffs/ applicants who have common cause of and interest against the 2nd respondent who, without any colour of right, invaded applicant's land in 2017.

On the respondents' complaint that the provisions of O. 1 rule 8 (i) have not been complied with, the applicants argue that the said rule is couched in a permissive way by the use of the word "may". Further that, this court has to exercise its discretionary power to protect substantial rights of the parties. They stress that the application is of utmost importance which necessitates the *status quo* to be maintained. It is their prayer that instead of striking out the

application, the court should grant them time to adhere to the pre- requisite procedures.

I have considered the material before me and the rival arguments of the respondents and the applicants. I am led to believe that the determination of the first limb of preliminary objection will suffice to dispose the whole preliminary objection.

As the record shows, this application has been filed by ten applicants. However, only Ismail Ahmad Mnakole has affirmed an affidavit in support of the application. This is clear from a brief explanation of the particulars including paragraph 1 of the affidavit which relates to Ismail Ahmad Mnakole. The same applies to the jurat of attestation. However, the main body containing brief relevant facts stated by the deponent relates to the ten applicants. This means that the appearance of parties in this application is not under Order III rule 1 of the Civil Procedure Code that is by a party himself, his recognized agent or an advocate duly appointed to act on his behalf. Likewise, this application is not by any means, by way of a representative suit in accordance with O.I rule 8 of the same Code as there is neither notice, the authority by other applicants authorizing Ismail Ahmad Mnakole to represent them, nor is there a court's representative order. The applicants' argument that this is not a representative suit but a suit between these ten applicants who have common cause and

interest of suing the 2nd respondent who, without any colour of right invaded the applicants' land in 2017 is not backed up by the record and the law. After all, this is an application and not suit.

The arguments by the applicants that O.I rule 8 of the Civil Procedure Code is couched in permissive way by use of the word "may" and that the application is of utmost importance which necessitates the *status quo* to be maintained cannot salvage the applicants from the predicament pointed out by the learned State Attorney because the applicants' *locus standi* has not been established.

As correctly argued by the learned State Attorney, this application has no leg to stand in view of the fact that the *locus standi* of either Ismail Ahmad Mnakole representing his fellows or the applicants prosecuting the application themselves has not been established.

It should be noted that *locus standi* is a threshold in litigation that affects not only jurisdiction, judicial powers and remedies but also and more importantly, the access to justice. Since the applicants have failed to prove their *locus standi*, this application cannot be maintained. It should be struck out.

Accordingly, the first limb of the respondents' preliminary objection is upheld and this, in my view, suffices to dispose of the whole matter.



The application is, accordingly, struck out with no order as to costs.

A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

W. P. Dyansobera

Judge

2.11.2021

This ruling is delivered under my hand and the seal of this Court on this 2nd day of November, 2021 in the presence of the applicants and Ms. Getruda Songoi, learned State Attorney for the 1st and 2nd respondents.

Rights of appeal to the Court of Appeal of Tanzania explained.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

W.P.Dyansobera

Judge