

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 11 OF 2022

JOSEPH FIDELIS SHAYO.....1ST APPLICANT

REBMAN MASSAM.....2ND APPLICANT

VERSUS

JOG AGRO-CONSULT &

SOLUTION (T) LIMITEDRESPONDENT

RULING

1st & 18th July, 2022

KISANYA, J.:

The above named applicants have by chamber summons predicated under Order I, Rule 8 (1) and 95 of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC) moved this Court to grant the following orders: -

- (i) That this Honourable Court be pleased to grant leave to file representation suit.*
- (ii) That this Honourable Court be pleased to issue any other order or relief as the same shall deem fit.*

The application is supported by the joint affidavit of Joseph Fidelis and Rebman Massam. The grounds for leave to file a representative suit are stated in paragraphs 4 to 9 of the supporting affidavit. The application is not contested. Apart from failing to file her counter affidavit, the respondent entered no appearance.

When the application was placed before me for hearing, the applicants were represented by Mr. Damian Victus, learned advocate.

In support of the application, Mr. Victus commenced his submission fully adopting the chamber summons as well as the affidavit in support thereof. He briefly urged this court to grant the application in terms of Order 1, Rule 8 of the CPC. Mr. Victus also invited this Court to consider the decision of the Court in the case of **Grace Lobulu & Others vs National Health Insurance & Another**, Misc. Application No.172 of 2019 in which similar application was granted.

I have keenly considered the brief submission made by the learned counsel for the applicants and the facts deposed in the supporting affidavit. The issue for my determination is whether the application meets the legal requirements.

I wish to note here that an application for representative suit is governed by the provision of Order 1, Rule 8 (1) of the CPC which stipulates:-

"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”.

It is clear that the above provision requires the application for leave to file a representative suit to establish that numerous persons are equally interested in the suit and they are willing to join it. In the case of **Emmanuel N’gwandu vs Maswa District Council & Others**, Misc. Land Application No.19 of 2020, in which this Court had this to say on the above cited provision: -

“In applications for representative suit the applicants have to prove that they stand on the same interest in the suit and that they have appointed one or more persons to appear and be heard or defend in such dispute on behalf of or for the benefit of all interested persons. The affidavit in support of the application has explained the reasons why applicants are coming with the prayers they have placed before the court in this application”.

See also the case of **Grace Lobulu & Others vs National Health Insurance & Another**, (supra) where similar position was stated. The rationale of seeking leave to file a representative suit was stated in the case of **K. J. Motors and 3 Others Vs. Richard Kishamba and Others**, Civil Application No. 74 OF 1999, at Dar es Salaam, (unreported) in which the Court of Appeal held that:-

"The rationale for this view (meaning the contents of Order 1 Rule 8 of The Code) is fairly apparent. Where for instance, a person comes forward and seeks to sue on behalf of other persons, those other persons might be dead, non-existent, or otherwise fictitious. Else he might purport to sue on behalf of persons who have not, in fact, authorized him to do so. If this is not checked it can lead to undesirable consequences. The court can exclude such possibilities only by granting leave to the representative to sue on behalf of the person whom he must satisfy the court that they do exist and that they have duly mandated him to sue on their behalf."

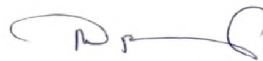
Being guided by the foregoing position of law, this application stands upon being satisfied that applicants herein and 39 others have a common interest in the suit to be instituted and other persons have consented to be represented by the applicants herein.

In my scrutiny of whether the applicants have met the above conditions, I was probed to go through the supporting affidavit and the documents appended thereto. Undoubtedly, the applicants and other persons have a common interest in the intended suit as stated under paragraph 5 of the affidavit. As regards the second requirement which give rise to the issue whether the applicants have been appointed by 39 others to file the suit, this fact was deposed in paragraph 9 of the supporting affidavit. However, I have noticed that the minutes of the meeting which

appointed the applicants, and the names of the other applicants (Annex JR-2) shows that the persons who attended the meeting were forty (40), the applicants inclusive. That being the case, a total number of other persons is 38 and not 39 stated in the supporting affidavit. That aside, I am convinced that the application meets the legal requirements provided for Order 1, Rule 8 (1) of the CPC.

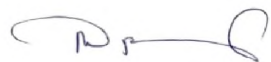
From the foregoing, I hereby grant the application. The applicants are granted leave to file a representative suit on behalf of 38 others. It is ordered further that the suit be filed within thirty days from the date hereof. Costs in due course.

DATED at DAR ES SALAAM this 18th day of July, 2022.



S.E. Kisanya
JUDGE

COURT: Ruling delivered this 18th day of July, 2022 in the presence of Mr. Damian Victus, learned advocate for the applicants and in the absence of the respondents.



S.E. Kisanya
JUDGE
18/07/2022

