

IN THE HIGH COURT OF THE UNITED OF REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISCELLANEOUS CIVIL APPLICATION NO. 10 OF 2022

JUSTIN MINJA.....1ST APPLICANT

FREDIRICK RWAKATAHIWA.....2ND APPLICANT

MARIAM YOHANA.....3RD APPLICANT

EMMANUEL PETRO SENKAMBA.....4TH APPPLICANT

VERSUS

SIMANJIRO DISTRICT COUNCIL.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

Date of last order and Ruling: 21/9/2022

G. N. BARTHY, J.

RULING

The applicants in this matter namely Justin Minja, Fredirick Rwakatahiwa, Mariam Yohana and Emmanuel Petro Senkamba filed an application seeking for leave to the applicants to file representative suit to represent other fellow villagers 105 in a case to be instituted against Simanjiro District Council and Attorney General claiming compensation for unlawful intended acquisition of their land or the respondents to withdraw notices from evicting the said 109 villagers from their land. They also sought for any other relief(s) deemed fit to be granted by this court.

The chamber summons was founded under Order I, Rule 8(1) of the Civil Procedure Code [Cap 33 R.E. 2019] and other enabling provision of the law in force.

The chamber summons was supported by joint affidavit of the first, second and fourth applicant and the affidavit of the third applicant.

It was deposed in their affidavits that, all four applicants were the residents of Orungárwa hamlet formerly Tilili hamlet of Olbili village at Simanjiro district of Manyara region. That, the applicants together with other 105 villagers were owners of land located in that area making total of 1153 acres which they were in occupation since 1982.

That, on diverse dates from year 2017 to 2020 the District Commissioner and District Executive Director of Simanjiro district designated the said area to pastoralist land and demanded the owners to vacate the land.

The applicants and their fellow villagers are now seeking compensation of the said land, but they were informed they will be allocated land for residential premises only measuring 20 by 20 width and length. The area they were to be allocated was swamp and unfit for human consumption.

That the applicants in this matter are mandated to sue on behalf of other 105 fellow villagers for compensation of the intended eviction on their land. This follows the decision of all 109 villagers on a meeting consented to be represented by the applicants on the suit to be filed before this court. All 109 villagers claimed to have communal interests on the land to be acquired hence they intended to file the suit before the court of law. As the applicants are numerous and can't file and sign the documents.

On the date prior the hearing date, the counsel for the respondent had informed this court that they did not file their counter affidavit as they do not object the application.

On the date fixed for hearing before this court, all the applicants were represented by Mr. Simon Mbwambo the advocate, whereas all the respondents were represented by state attorneys Mr. Mkama Msalama and Zamaradi Johanes.

Mr. Mbwambo highlighted that, with respect to Order I, Rule 8 of the Civil Procedure Code (the CPC), Cap 33 R.E. 2019 which provides that, if the parties have common interest they may be represented in the suit. Whereas, in this matter the applicants wish to represent other fellow on the suit with similar interest. Since the application was uncontested, he prayed for their application to be granted as prayed.

Mr. Mkama the state attorney was of the view that, the application at hand had met the requirement of the law under Order I, Rule 8 of the CPC, Cap 33 R.E. 2019, therefore the application is not contested.

As far as this application is concerned, in consideration of the arguments of both sides, the provision of Order I, Rule 8 of the CPC, Cap 33 R.E. 2019 provides;

*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. [Emphasis added]*

The law is clear that, when numerous people have the same interest in one suit with the similar interest upon the permission of the court may sue or be sued on behalf of the interest of those persons. In regards to the matter at hand, both parties agree that the application have met conditions for leave to be granted.

The Court of Appeal of Tanzania has expounded the principle and the relevancy of leave in representative suits which have more than one person. This was clearly stated in the case of **KJ Motors & 3 Others Ltd v Richard Kishimba & 7 Others**, Civil Appeal No. 74 of 1999, CAT at Dar es Salaam (unreported) held that;

The rationale for this view 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 either 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 persons whom he must satisfy the Court they do exist and that they have duly mandate him to sue on their behalf.

In view of the said rationale with respect to the application at hand and in consideration of the law guiding matters on representative suit, in the present matter the applicants Justin Minja, Fredrick Rwakatahiwa, Mariam Yohana and Emmanuel Petro Senkamba wish to represent other 105 villagers.

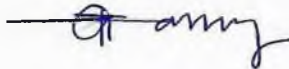
In the affidavits in support of the application it stated clearly that, they have same interest to sue for claim of their land and compensation as

exhibited on the annexures of the minutes of village meeting involving 109 villagers which had resolved to appoint the applicants to represent them in the intended suit against the respondent and all of them dully signed the minute of the said meeting. It is clear that the applicants have common interest with other 105 villagers they sought to represent them.

Thus, it is my finding that the applicants have met all the requirements for being granted leave to file representative suit against the respondents. In the up shot, the application for the representative suit is allowed. I hereby allow Justin Minja, Fredirick Rwakatahiwa, Mariam Yohana and Emmanuel Petro Senkamba to represent other applicants in the intended case against the respondents. No order as to the costs.


Dated at Arusha this 21st of September 2022




G. N. BARTHY
JUDGE
21/9/2022

Ruling delivered in the presence of Mr. Mbwambo the advocate for all the applicants and Mr. Mkama Msalama the state attorney for all the respondents and the absence of both parties in person.




G. N. BARTHY
JUDGE
21/9/2022