

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM DISTRICT REGISTRY

MISCELLANEOUS CIVIL APPLICATION NO 100 OF 2022

EMMANUEL NDUNGURU & 58 OTHERSAPPLICANTS

VERSUS

WEKU COMPANY LIMITED 1ST RESPONDENT

BENJAMIN JACKSON MTOKA 2ND RESPONDENT

RULING

Date of last order 29/09/2022

Date of Ruling 29/09/2022

This application is made under Order I, Rule 8 of the Civil Procedure Code, Cap 33 R.E. 2019 together with section 95 where the applicant Emmanuel Ndunguru wish to represent 58 others in the suit against Weku Company Limited and Benjamin Jackson Mtoka, and is thus seeking the leave of this Court to file a representative suit together with 58 other persons against the respondents.

The hearing of the said application proceeded exparte following an order of his lordship Judge Ismail dated June 23, 2022, after several attempts to serve the respondents failed; and an order to effect substituted service. The substituted service was accomplished through a publication of the summons on Mwananchi Newspaper of May 27, 2022.

On the hearing day, the applicants were represented by Mr. Dickson Matata learned advocate. He submitted that since no one is contesting their application to have the same granted on the basis of the chamber summons and its supporting affidavit. All persons have agreed to be represented as per the minutes of the meeting they held and a list of the appended signatures.

I have given due consideration to the application at hand and find it to be in order. The Court is moved through the provisions of Order I Rule 8(1) which stipulate:

Where there are numerous persons 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 plaintiffs 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.

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. That permission is now being sought through this present application. So, the only issue is whether the application before me has met the conditions for leave as explained above to be granted.

In the affidavits in support of the application it is clear that the persons seeking to be represented have the same interest to sue for a claim arising out of the contract in which, though entered separately and on diverse dates, have the same common interest to further a business of modern chicken farm as stated at paragraph 2 of the sworn affidavit.

Annexures MT1 and MT2 exhibited the record of minutes of persons meeting involving 58 persons who had resolved to appoint the applicants to represent them in the intended suit against the respondent; and all of them have duly signed the minutes of the said meeting with a list of names sought to be represented.

The Court of Appeal of Tanzania has pronounced itself on the importance and relevance of seeking leave in representative suits which have more than one person. In the case of **K J Motors & 3 Others Ltd v Richard Kishimba & 7 Others, Civil Appeal No. 74 of 1999, CAT at Dar es Salaam (unreported)** it was 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 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 mandated 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, I am satisfied that the applicant has common interest with 58 other persons he sought to represent.

Thus, it is my finding that the applicants have met the requirements for being granted leave to file a representative suit against the respondents. In the final analysis, the application for the representative suit is allowed.

ORDER

I hereby specifically allow Emmanuel Ndunguru, Michael Kijavara and Nancy Kyusa to represent other applicants in the intended case against the respondents as prayed by the learned advocate.

I order no costs.

Dated at Dar es Salaam this 29th day of September 2022



A. Z. Bade

JUDGE

29/09/2022

Ruling delivered in the presence of Mr. Matata the advocate for the applicants accompanied by Mr. Emmanuel Ndunguru who is the applicant; and in the absence of the respondents.



9/29/2022

X

A. Z. Bade

JUDGE

Signed by: Aisha Bade