

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
BUKOB A DISTRICT REGISTRY  
AT BUKOB A**

**MISC. LAND APPLICATION NO. 47 OF 2022**

**NICHOLAUS SAMWEL.....1<sup>ST</sup> APPLICANT  
KIHILA WILLIAM.....2<sup>ND</sup> APPLICANT  
MACHIBURA KARWINZE.....3<sup>RD</sup> APPLICANT  
SENI KASHANJE.....4<sup>TH</sup> APPLICANT  
MATHIAS MASAGANYA MAYALA.....5<sup>TH</sup> APPLICANT  
PHILIPO MWENDESHA.....6<sup>TH</sup> APPLICANT  
DEUSDERT KASHANGAKI SIMON.....7<sup>TH</sup> APPLICANT  
TUMA SHITUNGURU.....8<sup>TH</sup> APPLICANT**

**VERSUS**

**NATIONAL RANCHING COMPANY LIMITED.....1<sup>ST</sup> RESPONDENT  
MINISTRY OF LIVESTOCK AND FISHERIES.....2<sup>ND</sup> RESPONDENT  
THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

**Date of Last Order & Ruling: 19.09.2022**

**A.E MWIPOPO. J**

Nicholaus Samwel, Kahila William, Machibura Karwinze, Seni Kashanje, Mathias Masaganya Mayala, Philipo Mwendesha, Deusdert Kashangaki Simon and Tuma Shitunguru, who are applicants herein, have filed the present application praying for the court to grant leave to file representative suit. The application was made under Order 1 Rule 8 (1) of

the Civil Procedure Code Act, Cap. 33 R.E. 2019. Respondents namely National Ranching Company Limited, Ministry of Livestock and Fisheries, and the Attorney General did not oppose the application.

When the application was coming for hearing, both sides were represented. The Applicants were represented by Mr. Elias Hezron, advocate, whereas, the respondents were represented by Mr. Lameck Butuntu, Senior State Attorney.

The counsel for the applicants said in support of the application that applicants pray to institute representative suit against the respondent. They are intending to represent others 831 people who are aggrieved by the act of respondents to take the suit land from their possession. The applicants reason for instituting this application is that a total of 839 people were affected by the act of the respondents and all of them want to institute the suit against the respondents. Instituting representative suit will make the conduct of the case easy as they are suing on the same subject matter and on the same cause of action. Representative suit will allow speedy determination of the case. All 839 villagers have supported this application as the attachment in the affidavit shows. Applicants made notice to invite all people with interest to support or oppose the application and nobody came forward.

The counsel for respondents did not oppose the application.

In determination of the application for representative suit, the relevant law providing for application for representative suit is Order 1 Rule 8 (1) and (2) of the Civil Procedure Code Act, Cap. 33 R.E. 2019. The rule provides that, I quote;-

*"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."*

From the above cited rule, it is an established principle that a person can only act as a representative and initiate proceedings on behalf of others with the same interest after he or she has obtained leave of the Court. In the case of **Kiteria Manezes and 33 Others vs. Area Engineering Work Ltd and The Attorney General [1998] TLR 434**, it was held inter alia that;

*"...A pre-condition to filing a representative suit is that an application for leave to file such suit has first to be made..."*

Also, in the case of **Abdallah Mohamed Msakandeo and Others vs. City Commission of Dar es salaam and Two Others [1998] TLR 439**, the Court was of the view that the law requires an applicant for leave to file a representative suit to establish that numerous persons are similarly interested in the intended suit and they are willing to join in it.

From the above position, the mere existence of numerous persons in the suit does not suffice the grant to leave to file a representative suit. Applicants have to show their willingness to represent others on intended proceedings and those interested parties have to show their willingness to be represented and that they are appointing applicants as their representatives.

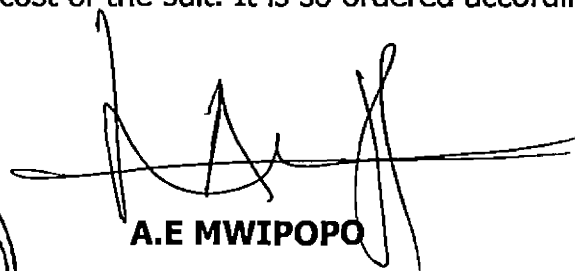
In the present application, applicants have shown their willingness to represent other residents of Rwenzige Hamlet within Kiteme Village in Kasharunga Ward, Nyakabingo Hamlet within Nyamilanda Village, and Nyamitundu and Butela Hamlets in Kisana Village, Kyebitembe Ward in Muleba District in the intended suit against the respondents in their joint affidavit where they have deposed and signed. Also, residents of Rwenzige Hamlet within Kiteme Village in Kasharunga Ward, Nyakabingo Hamlet within Nyamilanda Village, and Nyamitundu and Butela Hamlets in Kisana Village, Kyebitembe Ward in Muleba District have shown that they are willing

to be joined in the intended proceedings and they have consented to be represented by applicants by appending their signatures in the Minutes of two meetings called to appoint their representatives in the intended proceedings. Those meetings were held on 03.04.2022 at Nyahubinza Center and on 04.04.2022 at Rwenzige Hamlet in Kiteme Village. The said minutes of the two meetings were annexed in the joint affidavit. In the first meeting held at Nyahubinza center total of 346 person registered and signed the attendance and in the meeting held at Rwenzige Hamlet a total of 467 people registered and signed the attendance.

Moreover, the applicants published a notice informing all interested parties to join or oppose the application in Mwananchi Newspaper dated 04.08.2022 at page 25 where nobody appeared in court to oppose or pray to be joined in this suit. Thus, the publication of the matter was done properly according to the law.

Applicants and the people they want to represent have shown that they have the same interest since they are intending to institute proceedings in Court arising from the land dispute over ownership of the suit land which is estimated to measure 388 hectares. They have shown that the evidence intended to be adduced is also similar. I'm satisfied that the applicants and the people they want to represent have the same interest in the respective suit land and in the intended proceedings.

Therefore, I find that the applicants have met all the condition set under the Civil Procedure Code Act and the application is allowed. However, in computing the number of the people who signed the register at Nyahubinza center (346 persons) and people who signed attendance register at Rwenzige Hamlet (467 persons) makes a total number of the people intending to sue or institute proceedings against the respondent to be 813 persons in total and not 839 persons as it was stated by the applicants in their joint affidavit and their counsel in the submission. For that reason, Nicholaus Samwel, Kahila William, Machibura Karwinze, Seni Kashanje, Mathias Masaganya Mayala, Philipo Mwendesha, Deusdert Kashangaki Simon and Tuma Shitunguru are appointed to represent other 813 persons found in the attachment to joint affidavit in their intended proceedings arising from suit land situated at Rwenzige Hamlet within Kiteme Village in Kasharunga Ward, Nyakabingo Hamlet within Nyamilanda Village, and Nyamitundu and Butela Hamlets in Kisana Village, within Kyebitembe Ward. All those hamlets, villages and wards are in Muleba District. Each party to take care of its own cost of the suit. It is so ordered accordingly.

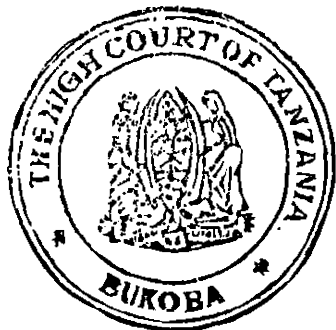


**A.E MWIPOPO**

**JUDGE**

**19/09/2022**

**Court:** Ruling was delivered today at 15:05 hours in the presence of 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> applicants and the counsel for the respondents.



**A.E MWIPOPO**

**JUDGE**

**19/09/2022**