

**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. 345 OF 2022**

**RAMADHANI KIPENYA 1ST APPLICANT
FAITH KYANDO 2ND APPLICANT
OSWALD MWINUKA 3RD APPLICANT
INNOCENT PETER 4TH APPLICANT
AND 312 OTHERS**

VERSUS

**ST. JOSEPH UNIVERSITY IN TANZANIA 1ST RESPONDENT
TANZANIA COMMISSION FOR UNIVERSITIES ... 2ND RESPONDENT
THE ATTORNEY GENERAL 3RD RESPONDENT**

RULING

11th October, & 29th November, 2022

ISMAIL, J.

The applicant herein have applied for grant of extension of time to file an application for review. The decision sought to be reviewed is that of the Court (Hon. Kulita, J.), issued on 11th February, 2021. The decision dismissed the applicants' suit in which they sought to be paid special and general damages paid to attend a degree program offered by the 1st respondent but was suspended midway it (the program).

The application has been objected to by the 2nd and 3rd respondents on the ground that the same is incompetent for contravening the provisions of Order I rule 8 of the Civil Procedure Code, Cap. 33 R.E. 2019. Disposal of

the objection took the form of written submissions ordered by the Court on 11th October, 2022. Parties to the application have duly complied with the filing schedule.

The 2nd and 3rd respondents' submission was preferred by Ms. Narindwa Sekimanga, learned State Attorney who argued that, whereas it is evident that the matter has been filed by four applicants on behalf of 312 others, names of the persons they represent are not known, and it is not known if they are part of the application. Such conduct, Ms. Sekimanga argued, went against the holding in ***Judicate Rumishael Shoo & 64 Others v. The Guardian Limited***, CAT-Civil Application No. 43 of 2016 (unreported), wherein it was held that, where there are more than one applicant, all names of applicants must be mentioned. It is in contravention of Order I rule 8 of the Civil Procedure Code, Cap. 33 R.E. 2019 (CPC). Learned counsel pointed out anomalies with which the instant application is associated. These are: No proof that the said applicants exist; no proof that the said applicants consented to the representation; it has not been established if the said applicants have the same interest; and no evidence that leave of the Court was granted to represent them.

She buttressed her contention by citing a couple of other decisions both of which insisted that conditions set out in Order I rule 8 of the CPC

must be complied. One of such conditions is the satisfaction that the complainants exist at the time of institution of the suit. The cases referred are: ***Director, Rajani Industries Ltd v. Ally Kanuwa & 26 Others***, CAT-Civil Appeal No. 98 of 2009 (unreported); and ***Hashim Mandongo v. The Minister for Industries & Trade***, HC-Misc. Civil Cause No. 2 of 1995 (unreported). Overall, the 2nd and 3rd respondents prayed that the application be struck out with costs.

Submitting in rebuttal, Ms. Bernadeta Chacha, counsel for the applicants, argued that leave to file a representative suit was granted by the Court (Hon. Justice Feleshi, as he then was), vide an order granted on 10th June, 2016, and that all other conditions attached thereto, including that of advertising the names in the newspaper, were complied with. In their view, need does not arise for having the instant applicant go through the same process, yet again. The applicants urged the Court to overrule the objection.

The respondents' rejoinder submission has maintained that the list of 312 applicants has not been made clear, thereby creating an uncertainty on whether they all exist and are all interested in the matter. The respondents took the view that the list of names dated 1st September, 2016 does not establish the existence of 312 applicants who are said to be part of this application.

The narrow question to be considered in this matter is whether the instant application is offensive of the law.

It is a settled position that, as quoted in ***Hashim Madongo & 95 Others*** (supra), "*a representative suit cannot be said to have been validly instituted unless and until the mandatory provisions of Order I rule 8 of the CPC are complied with.*" One of conditions set out in the said provision is the establishment of common interest in the litigation to be conducted. The obvious outcome of non-compliance is to render the suit fatally flawed and liable to striking out. Given the number of complainants, it is also obvious that advertisement of the list of the complainants is an inevitable requirement.

While the requirements of the law were complied with in Civil Case No. 122 of 2016 from which the instant application arises, the question is whether such requirement should and must be observed in all other subsequent actions arising from the same suit. The answer to this question is an emphatic No! Leave granted at the start of the process outlives determination of the suit and takes care of all subsequent steps or action that are taken by the parties. They include appeals, reviews, revisions and similar other challenges that they may contemplate and mount. It would be foolhardy and utterly inconvenient if each stage of the same proceedings

were to be preceded by a fresh application for leave. That would overwhelm the courts with a duplicity of needless requests for leave. In short, leave to file a representative suit has no expiry date as to require a renewal or new application.

In my considered view, leave granted on 10th June, 2016, pursuant to Misc. Civil Application No. 311 of 2016, ignited the matter and is continues to serve the purpose to the very end, and in all subsequent actions arising from the said matter. In view of the foregoing, I agree with the applicants that the objection is destitute of any merit and I overrule it. Costs to be in the cause.

Order accordingly.

DATED at **DAR ES SALAAM** this **29th** day of **November, 2022**.



M.K. ISMAIL

JUDGE

29/11/2022

