

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISC. LAND APPLICATION NO. 36 OF 2021

YORAM PAULO NDUMIZI.....1ST APPLICANT
REV. PETRO JACKSON MPOLO.....2ND APPLICANT
SAMSON CHISWAGALA MGONHWA.....3RD APPLICANT
JULIUS CHI WALIGO MGONHWA.....4TH APPLICANT
ELIAS YAKOBO MHANDO.....5TH APPLICANT
ASHERI CHI WALIGO MGONHWA.....6TH APPLICANT

VERSUS

**THE PERMANENT SECRETARY OF THE MINISTRY
OF DEFENCE AND NATIONAL SERVICE 1ST RESPONDENT**
THE ATTORNEY GENERAL2ND RESPONDENT

RULING

01/8/2022 & 6/9/2022

KAGOMBA, J

YORAM PAULO NDUMUZI and five others, have filed an application in this Court seeking leave to allow them institute a suit and defend it for and on behalf of 511 others, who are residents of Ihumwa and Mahoma Makulu, in Dodoma. They also pray for costs and any other relief(s) this Court may deem fit to grant.

The application is made under order 1 rule 8 (1) of the Civil Procedure Code, [Cap 33 R.E 2019] and is supported by a joint affidavit, and a supplementary affidavit both sworn by the applicants.

The respondents are the Permanent Secretary, Ministry of Defence and National Service and the Attorney General, who in their joint counter affidavit sworn by Capt. AE Makanzo pointed out discrepancies in number of the applicants to be represented in the suit as well as lack of proof of the applicants to represent 511 other “villages” and sharing a common interest in instituting the suit.

On 1st August, 2022 when the matter came for hearing, Mr. Fred Kalonga, learned advocate for the applicant prayed to adopt the joint affidavit of the applicants. He submitted that the applicants were owners of land parcels situated at Ihumwa and Mahoma Makulu which had been acquired by the Permanent secretary Ministry of defense and National service, who are the 1st respondent.

He submitted further that following lack of response to their 90 days’ statutory notice from the respondents, the land owners concerned held a meeting on 24/11/2020 where the applicants were appointed to seek leave of the Court to represent the others in filing their suit, hence this application. He prayed the application be granted as there were over 500 interested parties who could not come to Court all of them.

Mr. Camilius Ruhinda, learned Senior State Attorney represented the respondents. In his reply submissions, he opposed the application, mainly, for not being proper in law. He argued that for an application of this nature to be granted, the exact number and names of those who seek to be represented was supposed to be stated as well as their status if they were still alive or not and their locations.

Mr. Ruhinda pointed out that while Mr. Kalonga submitted that there were more than 500 interested parties, in the supporting affidavits it was stated that there were 517 people, a number which was also in the 90 days' notice. He said, however, that on agenda No. 4 in the purported minutes of the meeting of land owners concerned, which was attached to the supplementary affidavit, it was stated that there were over 500 people, but the list of names of those who attended the meeting, according to the affidavit, did not make a total of 517 people. He added that some of them did not sign, even those whose names were mentioned.

The learned Senior State Attorney submitted further that since the meeting that appointed the applicants was held as long back as 24/12/2020, it was important for the applicants to prove that all the people mentioned as land owners still maintained their interest to proceed with filing of the suit for the Court to know their exactly number and for implementation of Court orders, when issued. He cited in support of this contention the cases of **Hamza Omari Pandamilango Vs. Namera Group of Industries (T) Ltd**, Misc. Land Case No. 664 of 2017, High Court, Commercial Division, Dar es salaam, and **KJ Motors and 3 others Vs. Richard Kishamba and Others**, Civil Application No. 74 of 1999, CAT, Dar es Salaam.

He wound up his reply submissions by praying the Court to strike out the application so that, if the applicants still needed to file the suit, they can properly do so by observing proper procedures as guided in the cited cases.

In his rejoinder, Mr. Fred Kalonga maintained that the application was competent as the applicants were six (6) and those they were seeking to

represent were 511, hence the total of 517. He clarified that the list attached to the supporting affidavit had 517 names including those of the six (6) applicants. He added that the meeting that appointed the applicants was lawful and the list of the names was attached.

The learned advocate for the applicants rejoined further that there was no change of status of the interested parties. He added that the parties were alive and had given mandate to the applicants to appear on their behalf.

Mr. Kalango saw a difference between the circumstances in the cited case of **Hamza Omari Pandamilango** (Supra), and in the case at hand, in that the applicants in the cited case didn't attach the list of names of people they were seeking to represent. As regards the cited case of **K.J. Motors** (supra), he was of the view that there was no principle of law therein which was not observed in this application.

After hearing submissions from the counsels for both sides, the issue is whether the application before the Court is meritorious and competent.

On the side of merit of the application, the Court is interested to see if the numerous people who are said to have appointed the applicants to bring up this application have the same interest and have actually given the applicants unequivocal mandate to sue or be sued or defend a suit on their behalf. On the issue of competency, the Court would be interested in finding if the application has followed proper legal procedure to be landed for determination by the Court.

In this application, there is no dispute that the potential plaintiffs claim to be owners of land parcels which are alleged to be acquired by the 1st respondent. They are interested in defending their claim of right over the land in dispute. As a general finding, therefore, the claimants have the same interest in the intended suit.

The actual number of potential plaintiffs has been a matter of contention, with Mr. Ruhinda pointing out discrepancies thereabout, while Mr. Kalonga clarifying in his rejoinder that there is no discrepancy. I find the clarification made by Mr. Kalonga sufficient to clear the air on the number of the potential plaintiffs. He has made it that the total number of the applicants is six (6) and those they seek to represent are five hundred and eleven (511), hence their total number is five hundred seventeen (517).

Mr. Kalonga went ahead to emphasize that all the potential plaintiffs are alive and nothing has changed since 24/12/2020 when they held their meeting. However, Mr. Kalonga didn't rejoin on the point raised by Mr. Ruhinda that some of those who are mentioned in the list of the potential plaintiffs have not signed.

In my considered opinion and with due respect to Mr. Kalonga, the assurance he has given to the Court that the status of all the 517 potential plaintiffs has not changed to date since they held their meeting on 24/12/2020 is but a statement from the bar. It is not supported by any evidence. An affidavit could be sworn and filed to depone that fact for the Court to rely upon.

As Mr. Kalonga will appreciate, this is a Court of record. Any significant change of status regarding the applicants and those they seek to represent will have impact on the orders of the Court. For this reason, I agree with Mr. Ruhinda that it is important for the applicant to update the Court with current status of the potential plaintiffs as there could be substantial changes with passage of time, including their existence, as correctly held in the case of **Hamza Omari Pandamilango** (supra).

Most significantly, Mr. Kalonga has not disputed the fact that some of the potential plaintiffs have not signed to signify their willingness to be represented by the applicants. The Court has observed that in the list of land owners (who are potential plaintiffs) attached to the affidavit, at least four (4) people have not signed. Those who have not signed with their names and serial numbers are: Mtemi Habel Yohana (S/N 169), Jeska Daud Mpolo (433), Aidan Machimo (474) and Malima Madole Siliti (485). Without their signatures, the Court can not take them as part of those represented. In fact, by not signing it can be inferred that they are non-existing potential plaintiffs or even dead. For this shortfall, the number of land owners interested in this suit is reduced.

In **Juma A. Zomboko and 42 others Vs. Avic Coastal and Development Co. Ltd and 4 Others**, (Civil Application 576 of 2017) [2021] TZCA 3541 (16 November 2021) available at www.Tanzlii.org the Court of Appeal stated, on page 10 of its typed ruling, that;


"The position of the law is that a suit filed in the name of dead person is a nullity."

Therefore, it is for a sound reason that the applicants have to update status of the potential plaintiffs, by showing that they are still alive and have not changed their interests to pursue the intended suit. Equally important, is for all the potential plaintiffs to signify their consent to be represented by signing the mandate document. This was not properly done; hence the application is rendered incompetent.

For the above stated reasons, the application is struck out. I make no order as to costs. Order accordingly.

Dated at Dodoma this 8th day of September, 2022.




ABDI S. KAGOMBA
JUDGE