

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

LAND CASE NO. 17 OF 2018

- 1. JUMA RASHIDI MOHAMED.....1ST PLAINTIFF**
2. THOMAS MAGO NSWARE2ND PLAINTIFF
3. JIPE KIPESHA MSHANA.....3RD PLAINTIFF
4. MWAJUMA SHABANI4TH PLAINTIFF
5. LUSIA JACKSON AND 23 OTHERS5TH PLAINTIFF

VERSUS

- 1. MAWENI VILLAGE COUNCIL1ST DEFENDANT**
2. MAGARA VILLAGE COUNCIL2ND DEFENDANT
3. MANYARA VILLAGE COUNCIL3RD DEFENDANT
4. JUMUIA YA HIFADHI BURUNGE (JUHIBU).....4TH DEFENDANT

RULING

18/01/2021 & 18/03/2022

GWAE, J

On 24th October 2018 the plaintiffs, namely; Juma Rashid Mohamed, Thomas Mago Nsware, Jipe Gitesha Mshana, Mwajuma Shabani and Lucia Jackson (hereinafter to be referred to as "1st, 2nd, 3rd, 4th and 5th) and 23 others whose names are not disclosed filed a suit against four (4) defendants, notably; Maweni Village Council (1st defendant), Magara Village Council (2nd defendant), and Manyara Village Council (3rd defendant) who

are duly established under the Local Government (District Authorities) Act, Revised Edition, 2009 as well as Jumuiya ya Hifadhi Burunge (4th defendant who shall be referred to its acronymic name JUHIBU). The plaintiffs claim ownership of parcels of farm land located at place known as Zimbabwe valley within Babati District in Manyara Region.

Through their joint plaint, the plaintiffs are alleging to have been procedurally allocated with their respective farms from 1992 to 2004 by 2nd defendant and Kisangaji Village Council. However, between 2007 and 2015, it is alleged that, the defendants started putting beacons on the plaintiffs' parcels of land and eventually the plaintiffs named complained to have been unjustifiably evicted from their farms on which they used to engage in agricultural activities especially rice farming.

Being aggrieved by the alleged eviction by the defendants from their pieces of farms, the plaintiffs are now before this court praying for the following orders against the defendants jointly and severally;

- (i) Declaration order that the plaintiffs are the lawful owners of the suit land
- (ii) An order declaring that the plaintiffs are the lawful owners of their lands

- (iii) Payment of general damages of Tshs.4,320,000,000/= being the value of rice in 360 acres of land where each acre produces 40 bags of rice @1000,000/= per bag in three production years, an eviction order against the defendants and injunction order
- (iv) Costs of the case be provided for
- (v) Any other relief (s) as the court may deem fit to grant.

Through their joint written statement of defence, the 1st, 2nd and 3rd defendants vehemently disputed the plaintiffs' claims by stating that the plaintiffs were never allocated pieces of farms except that, the plaintiffs committed offences of forgeries and that such offence was referred to the Police and that, the said Kisangaji village and 2nd defendant are two different villages whereas Magara village led establishment of 1st and 3rd defendant. The defendants stated that, those plaintiffs who alleged to have either sold or purchased pieces of land in the suit land, the sale or purchase was not authorized since the disputed land is a reserved one.

Admittedly, the 1st, 2nd and 3rd defendant stated that there are beckons put by the defendant aimed at reserving the land including the land allocated to the JUHIBU.

On his part, the 4th defendant, JUHIBU fended himself through her written statement of defence that, she in lawful and quite possession of the suit land since 2003 /2004 since she was invited and permitted to enter into the suit land by the 1st, 2nd and 3rd defendant. All defendants finally prayed for an order dismissing this suit with costs.

Basing on the parties' pleadings and with court's consultation with the parties' advocates, the following issues were framed;

1. Whether the plaintiffs' (28) are lawful owners of pieces of land located at
2. If 1st issue is answered in affirmative, whether the plaintiffs are entitled to compensation
3. What reliefs are the parties entitled

Throughout the trial, the plaintiffs were represented by Mr. Hamis Manyota assisted by Mr. Richard Manyota, both the learned advocates whereas the 1st, 2nd and 3rd defendant were represented by Mr. Peter Musetti, the Senior State Attorney (SSA) and Mr. Duncan Oola who appeared for the 4th defendant.

After close of the parties' case and when I was about to compose a judgment, I came to discover anomalies in the plaint to wit; five (5)

plaintiffs named in the plaint have only signed in the plaint but other 23 plaintiffs have neither been named nor is there any leave of the court for a representative suit that has been appended to the plaint, nor 23 other plaintiffs are pleaded. After such court's observation, the parties' advocates were entertained to address the court:

Mr. Manyota for the plaintiffs informed the court that he was aware that the 5 plaintiffs had applied and obtained leave of the court whereas Mr. Musetti argued that this suit is incompetent if there is no leave for representative suit. After the address by the parties' counsel, the court deferred its verdict and the parties were requested to furnish a copy of the leave, if any.

Despite the order dated 22nd December 2021 of the court directing the parties especially the plaintiffs to avail the court with a copy of the leave for a representative suit if the same was really granted but none like a copy of the leave was given. Consequently, advocate Manyota sought court's pronouncement of a judgment for five plaintiffs only while Mr. Mkama, the learned state attorney for the 1st, 2nd and 3rd defendant as well as Mr. Jeffy, the learned advocate for the 4th defendant were in dilemma in the manner that they thus left it for the court to either render a judgment

for only five (5) plaintiffs named in the plaint or strike out the suit for being incompetent.

In our case, while going through the plaintiffs' plaint, I have noted that, it is only five plaintiffs (1st-5th plaintiff) who have signed therein. Worse still nowhere other twenty-three plaintiffs have been pleaded neither there any pleading to the effect that there was an application for leave for a representative suit that was granted by the court. Though the plaint does not expressly say so, it is plainly clear the five plaintiffs have purported to file not only on their behalf but also on the behalf of other 23 persons whose names are not disclosed.

Since the plaintiffs ought to have applied and obtained leave first before institution of their suit and, it was expected, if the application was filed and granted, such proceedings to have been pleaded and a copy of the ruling was not appended to the plaint. It is my considered view that, those who were willing to be represented in this suit ought to have signed against their names and in the application for representative suit the one representing must have same interest as the other plaintiffs or if acted in the capacity of administrator, documentary evidence (letters of administration) ought to have been attached to that effect.

This requirement is stipulated under Order 1 Rule 8 (1) of the Civil Procedure Code, Cap 33, Revised Edition, 2002 reads;

“8.-(1) 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 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”.

The same position of the law was judicially highlighted by my fellow learned brother, **Mackanja, J** in the case of **Abdallah Mohamed Msaka and 2 others vs. City Commission of Dar es salaam and two others** (1998) TLR 439 where it was held;

“Provisions of order 1 Rule 8 of the Civil Procedure Code, 1966 require an application for leave to file a representative suit to establish that numerous persons are similarly interested in the suit and they are willing to join it. These provisions do not admit where

applicant merely intends to invite others who may have interest in the case”.

(See also a decision in **Wanjiru vs. Standard Chartered Bank Kenya Ltd and others** [2003] 2 EA 701

In our instant case, the plaintiffs were initially not being represented by any representative that is since they appeared before his lordship, **Maige, J** as he then was now JA on 27th November 2018 till on 8th October 2020 when advocates from Human and Legal Rights Centre (LHRC) at Arusha appeared representing them and whenever I asked the plaintiffs if there was leave granted by the court for a representative suit, the 1st -5th plaintiff used to reply in affirmative.

From the plaint and the manner, the evidence presented by the plaintiffs’ witnesses during trial of this particular suit involving private rights I think, it will be unfair if the judgment delivered in relation to only five (5) plaintiffs. I am saying so simply because even some of exhibits that have been received by the court for evidential value and those rejected were relating not only to these five plaintiffs but also some of 23 plaintiffs who have not been properly joined in this case.

In **Rujuna Shubi Balonzi Senior v. Registered Trustee of CMM**

(1996) TLR 203 at page 211-212

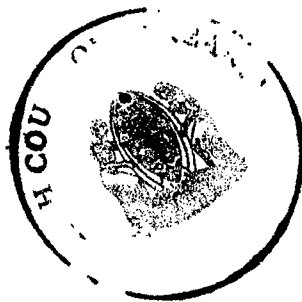
“The foundation of the order 1 rule 8 CPC is found in principle which transcends the personal or parochial nature of the combatants who are arrayed as parties to the suit. It affects the rights of the person not before the court. Hence, a duty of the court to follow meticulously procedure provided by the Order 1 Rule 8. In view of the reaching consequences of a decree of a decree passed is what is described in law as a representative suit. It is necessary that the relevant provision is treated as presentory and mandatory”


Since the procedures governing the suit at hand are those under Civil Procedure Code (Supra) I therefore find the wording in the provision of the law coaches to the mandatory requirement as distinguished from those which are governed by other procedural law (See Misc. Civil Cause No. 55 of 2005 between **Adelina Chugulu and 99 others vs. National Examinations Council and AG** (unreported-H.C) where an application was for pre-rogatory orders of the certiorari, to call and quash the decision of the 1st respondent and compel him to release the examination results of 100 students where in this suit, the procedures for instituting are governed

by the CPC and it relates to purely private rights over parcels of farm land allegedly trespassed by the defendants.

In view of the above noted anomalies and for the interest of justice I find the suit to have been incompetently filed. I thus strike it out with no order as to costs as the plaintiffs are laypersons who were initially not enjoying any legal services. I further direct, the plaintiffs including the said 23 plaintiffs if still desirous to pursue their suit before a court of competent jurisdiction, they may do so after they have applied and obtained the leave for representative suit. In the event, they will file their suit afresh, they are exempted from paying court's fees. In case the plaintiffs re-institute their case, let it be given priority as far as expeditious hearing and determination of cases are concern.

I so order.




M. R. GWAE
JUDGE
18/03/2022