

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**MBEYA DISTRICT REGISTRY**  
**AT MBEYA**  
**MISC. LAND APPLICATION NO.18 OF 2023**

**EZEKIA KIMANGA AND 851 OTHERS..... APPLICANTS**

**VERSUS**

**PERMANENT SECRETARY**

**MINISTRY OF LAND, HOUSING AND**

**SETTLEMENT DEVELOPMENT.....1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

Date of last Order: 02/06/2023

Date of Ruling: 09/06/2023

**NDUNGURU, J.**

The applicants herein have filed this application praying for this court to grant them leave to file representative suit against Respondents. The applicants crave this court to allow Ezekia Kimanga and Modestus Kilufi to

represent other applicants in all necessary steps of initiating and instituting the intended suit.

The application is brought under Order I Rule 8 of the Civil Procedure Code Cap. 33 [R.E 2019]. The application is supported by two affidavits deponed by Mr. Ezekia Kimanga and Modestus Kilufi each. The respondents opposed the application by filing a joint counter-affidavit deponed by one Geoffrey Anyabwile Mwaijobile the principal officer of the 1<sup>st</sup> respondent.

At the hearing of this application, the applicants enjoyed the legal service of Mr. Edson Mbogoro assisted by Mr. Jebra Kambole and Faraji learned Advocates whereas the respondents had the legal service of Mr. Tibaijuka, learned State Attorney.

Mr. Kambole was the first to kick the ball rolling. He submitted that in the instant application for Representative suit the applicants are seeking leave for the applicants to sue on behalf of 851 other applicants. The learned counsel submitted that there are two basic conditions for the court to grant this application. The conditions are contained in **Order I Rule 8** of the Civil Procedure Code (Cap 33 R.E 2019). The conditions are; **One**, that there must be numerous people, **two**, the people must have the same

interest in one suit. The counsel submitted that, the procedural aspect of it is that the for the parties to file representative suit there must seek permission of the court.

The counsel went on submitting that in the present intended case there is no dispute that the people are many (numerous), the fact which is pleaded in para 2, 3 and 7 of the two affidavits supporting the application and annexure MB2 to the affidavits. On the second condition, the counsel submitted that, the applicants have the same interest on the suit. The fact that the applicants have the same interest is contained in para 6,8 and 9 of the two affidavits. That the applicants are owners of the land in dispute as stated at para 8 of the affidavits, they all together are dissatisfied with the eviction order as stated at para 6 of the affidavits and they are aggrieved with the re demarcation of boundaries and forceful evaluation of their properties as stated at para 9 of the affidavits. The counsel fortified his argument by referring the case of **Adinani Mohamed Almas and Others v Mwajabu Abdallah Jongoa**, Misc Land Application No 583 of 2021, **Nicholaus Samwel & Others v National Ranching Company Ltd**, Misc. Land Application No.47 of 2022 and **Yoram Paulo Ndumizi & Others v Permanent Secretary of Ministry of Defence and National**

**Service and Attorney General**, Misc. Land Application No. 88 of 2022.

(All HC unreported)

The counsel for the applicants went further submitting that the order of filing representative suit cannot by any way prejudice the respondents, relatively will serve time and costs to the parties and the court at large. He said the applicants are just knocking the doors of the court and nothing substantial can be determined at this stage. The applicants are exercising their right to access to the court and the leave is a pre requisite condition. He thus prayed the application be granted.

Opposing the application, Mr. Tibaijuka the learned State Attorney for the respondents commenced his submission by praying for the adoption of the content of counter affidavit to form part of respondents' submission. Mr. Tibaijuka was of the view that the application for representative suit is governed by Order I, Rule 8 of the CPC. He said for the application to be granted all conditions contained in the provision must be met.

The learned counsel for the respondents continued to submit to the effect that the chamber application and the affidavits in support of, are contradicting. He said in the chamber summons the applicants are 852 all

pray for permission or leave to file representative suit against the respondents. He contended that para 7 of the affidavit sworn by Ezekia Kimanga provides for the applicant at the same time being numerous that the same is at para 7 of the affidavit sworn by Modestus Kilufi adding, that is confusing. The learned State Attorney concluded by saying that the applicants' affidavits do not support the present application.

The learned counsel for the respondents further contended that the two who have been nominated to represent others would have appeared in the application but not all the applicants. He said though the applicants are just knocking the door of the court yet the affidavits must reflect the chamber summons. He consequently urged the application be struck out with costs.

In his rejoinder, the learned counsel for the applicants maintained his submission in chief. He stated that the application, chamber summons and the annexures be taken as whole and not in piecemeal. He went on saying what the counsel is referring is just a grammatical error which cannot render the application incompetent. The court has to look to the correct number the suing people.

After hearing the submission for both parties the main issue for determination is whether or not the applicants have sufficient reasons to be granted leave to file a representative suit.

Before generally canvassing the grounds for application, I have dispassionately considered the submission of the learned State Attorney. It is like he is challenging the competence of the chamber application. In other words, he was like trying to raise the so called preliminary point of objection through back door. With due respect to the respondents' Attorney, I do not think that the preliminary point of objection has been raised at the right instant. If he intended to do so, he was supposed to follow proper procedure by raising an objection before the hearing of the application.

Therefore, I proceed to determine the application on merit. This application for representative suit by the applicants is brought under Order I Rule 8 of the Civil Procedure Code Cap.33 [R.E 2019]. The rule provides for requirements for instituting the representative suit. It reads as follows:

*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, a 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.*

It is a requirement of the law that where there are numerous persons with the same interest who want to appear in the suit on behalf of other interest persons have to do so after obtaining the permission of the court to file the same. In the instant application, the applicants through their learned counsel have moved this court to allow two applicants from among them who are Ezekia Kimanga and Modestus Kilufi to appear and be heard or defend the case on behalf of other persons with the same interest in a suit.

The Court of Appeal of Tanzania has expounded the principle and the relevancy of leave-in representative suits which have more than one person. In the case of **KJ Motors & 3 Others Ltd v Richard Kishimba & Others, Civil Appeal No. 74 of 1999, CAT at Dar es Salam** (unreported) 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 either 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 5 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.**" [Emphasis added].

Applying the above provision of the law in the instant application, it is clear that the other people have authorized the applicants to represent them in this intended suit against the respondents. In the present case, the applicants have prayed for Ezekia Kimanga and Modestus Kilufi to represent other 850 people.

On paragraph 6,8 and 9 of the applicants' affidavits, they have stated that all of them have similar interests and intend to sue the respondents. They claimed that the cause of action is also similar whereas the cause of action originates from the order of eviction from the land they allege to own lawfully, re- demarcation of boundaries and forceful evaluation of their



properties. All applicants are claiming that they are legal and lawfully own the land in dispute but respondents intend to remove the applicants unlawfully and unprocedural.

Reading the applicants' affidavit, the submission made by the learned counsel for applicants, and the minutes of the meeting its clear that the applicants convened a meeting and appointed the two named applicants to represent other people in the intended suit against the respondents. Therefore, there is no dispute that the other people authorized the applicants to represent them in the intended suit against the respondents.

It is my finding that the applicants have met all the requirements for being granted leave to file representative suit against the respondents.

In the upshot, the application for the representative suit is granted. I hereby allow EZEKIA KIMANGA and MODESTUS KILUFI to represent all the applicants whose names and signatures appear in annexure **MB2** to the application to the intended case against the respondents. No order as to the costs.

Order accordingly.



*D. B. Ndunguru*  
**D.B. NDUNGURU**  
**JUDGE**  
**09.06.2023**

Ruling delivered via audio teleconference whereas Mr. Tibaijuka, learned State Attorney for the respondents and Mr. Edson Mbogoro, Jebra Kambole and Faraji Mangula counsel for the applicants are remotely present.

*D. B. Ndunguru*  
**D.B NDUNGURU**  
**JUDGE**  
**09.06.2023**