

**IN THE HIGH COURT OF TANZANIA**  
**MUSOMA SUB-REGISTRY**  
**AT MUSOMA**  
**MISC. CIVIL APPLICATION NO. 1839 OF 2024**  
**REFERENCE NO. 20240131000001839**

**BETWEEN**

**AMOS BUSENE MARWA ..... 1<sup>ST</sup> APPLICANT**  
**SAIDI SHARAUDI MBUYE ..... 2<sup>ND</sup> APPLICANT**  
**MAIRO NYAMHANGA KITUNKA ..... 3<sup>RD</sup> APPLICANT**

***VERSUS***

**NOTH MARA GOLD MINE LIMITED ..... RESPONDENT**

**RULING**

*23<sup>rd</sup> & 30<sup>th</sup> May, 2024*

**M. L. KOMBA, J.:**

The applicants, in this application are seeking leave of this court for them to represent 259 others claimants in their intended suit to be filed in this court. The application is brought by way of chamber summons under order 1 rule 8 (1) of the Civil Procedure Code, Cap 33 [R.E 2019] (the CPC) supported by the joint affidavits of the applicants. The application is resisted by a counter-affidavit duly sworn by Mr. Apolinary Lyambiko, a

principal officer of the respondent who stated to have been authorized to swear the affidavit on behalf of the other respondent.

During the hearing of the application, the applicants were represented by Mr. Thomas Ilanga whereas the respondents enjoyed the legal services of Mr. Lubango Sheduki, learned advocate.

Arguing in support of the application Mr. Ilanga prayed the affidavit in support of the application to be adopted and submitted that there are 262 people who wanted to file a suit when leave granted. It was his submission that the above applicants were appointed by their fellow 259 for them to file representative suit on their behalf. He referred me to paragraph 7 of the applicants' affidavit where there is a list of complainants with all names and signature.

Mr. Ilanga is aware of the conditions to be met with applicants before any court grant leave of representative suit. He mentioned the conditions as **one**; he said there must be numerous people and in the intended suit there are 262 people. **Two**; the intend applicants must have common interest, he elaborated that the common interest was shown at paragraph 3 of affidavit that all applicants were miners (*wachimbaji*) in Nyabigena

area and the **third** condition is evidence showing some people have appointed applicants and applicants have permit from those will be represented. On the last condition he moved this court to paragraph 7. It was his argument that the mentioned conditions were amplified in **Kirigiti Sasi vs Genkuru Village Manager and 6 Others**, Civil Case No 39 of 2001 HC Mwanza at page 6 and 7 and 8, **Hamza Seif & Another vs Tanzania Cigarette Public Company & Others (Misc. Civil Application 205 of 2022) [2022] TZHC 15446 (4 November 2022)** and **Silvanus Kotei and 10 Others vs Dodoma City Council and Another (Misc. Civil Application No. 56 of 2023) [2023] TZHC 23152 (7 November 2023)** that all represented must have common interest. He prayed the application to be granted and the costs to be in the cause.

On the other hand, Mr. Lubango in consideration of the submission and joint affidavit of the applicants, he started by subscribe to the conditions as submitted by counsel for applicants as it is the position of the law. To him the issue is compliance to the said conditions. Starting with the nomination of three people, it was his submission that the condition need proof that the rest of the applicant has authorized applicants to file the application.

Analysing paragraph 7 of affidavit and annexure thereto together with the 2<sup>nd</sup> paragraph he contended that the contents does not show the three applicants were appointed, there is no permission in the said annexure. It was his elaboration that as affidavit is about facts, applicants were supposed to show their willingness and cemented his submission by decision **Hamza Seif vs Tanzania Cigarette Public Company Limited and 3 Others** (supra) the court insisted the authorization.

Mr. Lubango went on submitting that for the leave to be granted there must be commonality of the interest. However, he started that intended plaintiffs has provide description instead of interest which has to be protected. To him the intended claimants being miners they were supposed to show interest via annexures of the mining permit and not otherwise. He referred the case of **Kirigiti Sasi vs Genkuru Village Manager and 6 others** (supra) which was submitted by counsel Ilanga at page 9 that their common interest must relate each other that means they originate from same and similar cause. Counsel Lubango worried about the danger of this court to entertain one suit which will have different interests from plaintiffs. To him the application does not meet the legal requirement for the applicants to represent their fellows and prayed the same be dismissed

with costs and intended applicants may file suit at individual level where it will be easy to prove claims at individual level.

Mr. Ilanga had a short rejoinder that annexure ICA-1 at paragraph 7 is elaborative on the permission from its heading and the document show complaints or demands by each person, that are their interest. He further elaborated that in the cited case of **Hamza Seif** among others the condition is parties are numerous and have common interest the same is to the application at hand. He assured this court that there might not be multiple cases.

Having heard the submission of both parties' counsel for and against this application, the issue for determination by this court now is whether this application is meritorious to grant. In determination of the issue, I read the relevant law providing for application for representative suit is Order 1, Rule 8 (1) of the CPC. The rule provides that;-

*'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".*

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 Menezes and 33 Others vs Afra Engineering Work Ltd and Others (Civil Case 297 of 1997) [1998] TZCA 6 (27 February 1998)**, 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...'*

Both counsels were at per on conditions to be fulfilled prior to filing of the suit. Mr. Lubango resisted applicants' application on two grounds; common interest and authorization. He submitted that intended plaintiffs must have common interest. I have read the annexure and find each of them has similar complaints over mining pit (maduara), house and sand which was in the disputed land. I find the proof that they had mining permit to be of added requirement and not primary requirement.

Coming to the issue of authorization, first of all I subscribe to all cited cases on the conditions to be met by applicants. 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 application 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, just as in **Hamza Seif vs Tanzania Cigarette Public Company Limited and 3 Others** (supra). From the above position, the mere existence of numerous persons in the suit does not suffice the grant leave to file a representative suit. The applicants have to show their willingness to be represented by one or several of them. The claimants herein have shown that they are willing to be joined in the intended suit, the willingness of the intended plaintiffs as per submission of advocate Ilanga is from annexure ICA-1 and paragraph 7. The paragraph together with its annexure reads;

*7. That the list of names, physical addresses and signatures of the applicants and 259 intended plaintiffs in the representative suit are attached to be part of this joint affidavit and the same is marked as ICA-1 collectively.*

The annexure reads;

**SISI NI WADAU WA MASHIMO (MADUARA) YA DHAHABU  
YALIYOKUWA ENEO LA NYABIGENA KIJJI CHA KEWANJA  
KATA- KEMAMBO WILAYA YA TARIME TUNAOMBA  
KUWAKILISHWA MAHAKAMANI**

Flowing from the provisions of Order I, rule 8 of the CPC, it is clear that a representative suit stands if the parties are numerous; the parties have same interest; the necessary permission of the Court has been obtained; and the notice to all persons interested in the suit has been issued. It is further settled law that the numerous persons must be willing to be joined in the suit and appoint one or more persons to represent them in the suit.

In the cited paragraph together with the annexure there is no authorization from 259 intended plaintiffs to applicants herein for the latter to represent them. The message in annexure is that 259 people are desirously and willing to be represented in the suit but they did not appoint neither select applicants herein. That could only be possible by having a phrase in the annexure just as they did at the heading by mentioning names of persons whom they wish to represent them.



The position was underscored in **K. J. Motors and 3 Others Vs. Richard Kishamba and Others**, Civil Application No. 74 of 1999, at Dar es Salaam, (unreported), in the following terms: -

*'The rationale for this view (meaning the contents of Order 1 Rule 8 of The Code) 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 otherwise 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 possibilities only by granting leave to the representative to sue on behalf of the person whom he must satisfy the court that they do exist and that they have duly mandated him to sue on their behalf.'***

There is nowhere in the application where applicants show that prospective plaintiffs/claimants appointed applicants above named and mandated them to be their representative in the intended suit.

In the end I find the court is not well moved as the applicants were not authorized by 259 other claimants to file a suit on their behalf. For that matter the application is hereby dismissed with costs.

**DATED** at **MUSOMA** this 30<sup>th</sup> day of May, 2024.



*NK*  
**M. L. KOMBA**  
**Judge**

Ruling delivered in chamber in the presence of Mr. Thomas Ilanga advocate for applicants and Advocate Iman Mfuru who was holding brief of Advocate Sheduki Lubango for the respondent.

*NK*  
**M. L. KOMBA**  
**Judge**

**30 May 2024**