

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA SUB - REGISTRY

AT SONGEA

(LAND DIVISION)

MISC. LAND APPLICATION NO. 27741 OF 2023

VITUS NGONYANI 1ST APPLICANT

SIXMUND BANDA 2ND APPLICANT

VERSUS

NASRA WILLIAM 1ST RESPONDENT

LUSIUS MLOWE 2ND RESPONDENT

SONGEA MUNICIPAL COUNCIL 3RD RESPONDENT

COMMISSIONER FOR LAND 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

RULING

Date of Last Order: 02/02/2024

Date of Judgment: 15/02/2024

U. E. Madeha, J.

This ruling arises from the application filed by the Applicants praying for an order of this Court allowing them to file a representative suit. The application is made under Order 1, Rule 8 (1) of the *Civil Procedure Code* (Cap. 33, R. E. 2019) and it is supported by an affidavit sworn by Walda Kalongani, on behalf of the Applicants.

According to the affidavit filed in support of the application, the Applicants and one forty- six others are residents of Matogoro Shuleni

Street within Songea Municipality and they have interest in Plot No. 8, Block M located at Seed-farm area within Songea Municipality. It was averred further that in 2017 they started constructing a building for their street office having been allocated that piece of land by the third Respondent but they are surprised to find that piece of land has been sold by the first Respondent to the second respondent who has started using that land by constructing a building therein.

At the hearing of this application, the Applicants had the legal service of Mr. Edson Mbogoro, the learned advocate, the first Respondent appeared in person, the second Respondent had the legal service of Mr. Zuberi Maulid, the learned advocate and Ms. Theresia Mbawala, the learned State Attorney from the office of the Solicitor General appeared for the third, fourth and fifth Respondents.

Submitting in support of the application, Mr. Mbogoro prayed for the contents of the affidavit sworn in support of this application to form part of his submissions and he prayed for this Court to grant an order for the Applicants to file a representative suit since they have common interest in Plot No. 8, Block M located at Seed-farm area within Songea Municipality. He also requested for a notice to be issued to other persons who have interest on that piece of land to be joined or withdrawn

in the case as provided under Order 1, Rule 8 (1) of the *Civil Procedure Code* (supra).

The first Respondent and the learned State Attorney and advocate for the second Respondent has no objection to the prayers sought by the Applicants in this application.

Under Order 1, Rule 8 of the *Civil Procedure Code* (supra), this Court has a power to grant an order to file a representative suit. That provision 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 expenses, 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."

Also, in **Lujuna Shubi Ballonzi, Senior vs. The Registered Trustees of Chama cha Mapinduzi** (1996) TLR 203; this Court clearly stated that, a person may institute a representative suit after obtaining

leave of the Court or after complying with the mandatory requirements of Order 1, Rule 8 of the *Civil Procedure Code* (supra), which requires for a leave of the Court to be obtained before the institution of the case.

From what has been averred in the affidavit sworn in support of this application and the submission made by the learned advocate for the Applicants, the application is for an order to allow the Applicants to file a representative suit, representing one hundred and forty-six (146) others who has interest in Plot No. 8, Block M located at Seed-farm area within Songea Municipality, against the Respondents.

The Applicants also request for an order to allow any person who wishes to withdraw from the intended filed suit to do so. Withdrawing from the suit is always voluntarily done by a party to the suit. It cannot be done through an order of the Court at this stage. Thus, this Court will not deal with that prayer because the parties filed this application for an order of this Court that the Applicants to file a representative suit. The prayers to withdraw from a suit may be made by the party who wishes to do so after filing the intended land case stating the reasons for withdrawal and the prayer will be determined by the trial Court and not at this stage.

What is needed at this stage is for this Court to consider whether to grant or not an order for the Applicants to file a representative suit to represent one hundred and forty-six (146) other, whose names are annexed in the application. From what has been stated by the Applicants' advocate and taking into consideration the wording of Order 1, Rule 8 of the *Civil Procedure Code* (supra), the Applicants are granted with the right to file a representative suit as prayed. I give no order to costs.

DATE and DELIVERED at **SONGEA** this 15th day of February, 2024.



A blue ink signature of the judge, U. E. Madeha, written in a cursive style.

U. E. MADEHA

JUDGE

15/02/2024

COURT: Ruling is delivered in the presence of the Applicants and their Counsel and the Respondents. Right of appeal explained.



A blue ink signature of the judge, U. E. Madeha, written in a cursive style.

U. E. MADEHA

JUDGE

15/02/2024