

IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPL. NO.664 OF 2017

HAMZA OMARI PANDAMILANGO.....APPLICANT

VERSUS

NAMERA GROUP OF INDUSTRIES (T)LTD.....RESPONDENT

R U L I N G

P.M.KENTE,J:

This is a ruling in respect of an application to lodge a representative suit. The application is made under Order 1 Rule 8(1) and section 95 of the **Civil Procedure Code [Cap 33 R.E 2002]**, and is supported by an affidavit deponed to by the applicant one **Hamza Omari Pandamilango**.

Pursuant to the order of this court, the application was heard by way of written submissions.

In support of the application, the applicant submitted that, he along with his fellows have suffered great losses of their properties following the unlawful demolition by the respondent which was a

result of an execution of a decree of the court in Land Application No. 218 of 2010 in which the court ordered the demolition of structures which were unlawfully erected in the respondent's property. The said demolition it is submitted, should have been against four people who are Shabani Magani , Mohamed Mkwere, Said Ngingo and Shaban abdallah and not the applicant herein together with his fellows whose properties were demolished unlawfully by the respondent.

It is further submitted that, due to the nature of the dispute the applicant is now seeking the leave of this court to file a representative suit. He submitted that the intending plaintiffs are 49 in total and their interest are common in nature and they have never been compensated in any way or manner. The applicant therefore, prayed for the court to grant this application as it will enable this court to avoid numerous suits which are likely to be filed and the costs on the part of the applicants. To support his argument the applicant cited the case of **Abdallah Mohamed Msakandeo&Others Vs. The City Commission of Dar es Salaam (1970) HCD n** which

stipulated on the requirements which must be fulfilled before one can be allowed to lodge in representative suit.

In reply, the respondent strongly resisted this application by arguing that there is no proof whatsoever that the applicant was authorized to file a representative suit for and on behalf of the potential plaintiffs whose names were annexed as annexure A1 to the affidavit. He submitted that there is no signature on the list attached to the affidavit. It is further submitted that in an attempt to resolve this problem, the applicant filed a reply to the counter affidavit where he annexed a list of intended plaintiffs with some of the names having signatures. It is the respondent's contention that the said reply was filed without the leave of the court and that it has been introduced in court illegally.

The respondent contended further that there is nothing suggesting that the said people have mandated the applicant to sue on their behalf. The respondent concluded his submission by praying the court to dismiss this application for want of merit.

Having carefully considered the submissions made by both parties, I am settled in my mind that this application is incompetent as it has no list of the purported numerous persons who are said to have given the applicant the mandate to sue on their behalf. The list that was attached to the applicant's affidavit bears the names of the purported numerous persons without their signatures. This court cannot rely on the said document as evidence since it is not signed by the purported intending plaintiffs.

Moreover, I wish to note here that a representative suits are provided for under **Order 1 Rule 8 of the Civil Procedure Act, Cap. 33 R.E 2002** which states, *inter alia*:-

*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."*

In the present application there is also nothing on record to show that the alleged 49 people are in existence and have instructed the applicant to sue on their behalf.

Going forward, I would say that, the procedure adopted by the applicant to append the list of the purported 49 people to the reply to the counter affidavit is to say least, an afterthought. This is because the proper list of the persons who authorized the applicant to represent them was supposed to be annexed to the applicant's affidavit right from the outset. Failures to do so renders incompetent the present application which is hereby struck out with costs.

Dated at Dar es salaam this **10<sup>th</sup>** day of **August, 2018**.

  
**P.M.KENTE**  
**JUDGE**