

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO.132 OF 2021

MIRAJI ATHUMANI BIGO.....1ST APPLICANT

HAMISI EDWINI FUNGO.....2ND APPLICANT

MOHAMEDI KIFUA NGAJULAGE.....3RD APPLICANT

MRISHO HAMISI SINUDO (*on behalf of 26 others*).....4TH APPLICANT

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

FAISAL AWADH.....2ND RESPONDENT

RULING

OPIYO, J.

Mr. Masunga Kamihanda, and Thobias Laizer, learned counsels for the 1st and 2nd respondents here in above have objected the application at hand on two points of law;- (1) The applicant have no cause of action against the 1st respondent and (2) The court has been wrongly moved.

The factual background leading to the dispute at hand briefly is as follows. The five applicants here in above did move this court under Order 1 Rule 8 and section 95 of the Civil Procedure Code, Cap 33 R.E 2019, seeking for a leave of this court so that they can be allowed to file a representative

leave of this court so that they can be allowed to file a representative interlocutory application for temporary injunction against the respondents, pending the expiry of a 90 days' notice issued to the 1st respondent. Subsequently upon the expiry of the notice be allowed to file a suit for themselves and on behalf of 26 persons whose names and signatures appear in the document annexed in the affidavit. Against this application, the counsels for the respondents raised the two objections above stated hence this ruling. In this matter, advocate Barnaba. Lugua appeared for the applicants, while respondents were represented by Mr. Masunga Kamihanda, Learned State Attorney for the 1st respondent and Mr. Thobias Laizer, learned counsel for second defendant.

Submitting orally on the 2nd objection, Mr. Laizer for the 2nd respondent argued that, Order 1 Rule 8 of the Civil Procedure Code, Cap 33 R.E 2019, is very explicit on what to be applied for. The provision allows persons to appear for others either to file a suit or defend it. The applicants' prayers that they should be allowed to file a representative interlocutory application for temporary injunction against the respondents, pending the lapse of a 90 days' notice (see para 17 of the affidavit) is not accommodated under the provision of Order 1 Rule 8 of the Civil Procedure, supra. As for section 95, the same is also not applicable in these circumstances, he argued. That, the provision is applicable only where there is no specific provision as it is concerned with the inherent powers of the Court. Mr. Laizer insisted that the proper provision for such interlocutory application is Order XXXII Rule 1 which is applicable when there is a pending suit. But in our case, there is no

pending suit, therefore the same is also not applicable. He cited the case of **Sea Saigon Shipping Ltd versus Mohamed Enterprises (T) Ltd, Civil Appeal No. 37 of 2005**, where it was observed that, non-citation of a relevant law renders the application incompetent. The same was the decision in **Global Beverages Ltd versus Registrar of Trade and Service Marks and Another, Misc. Commercial Appeal No. 10 of 2007, High Court of Tanzania, Commercial Division at Dar ES Salaam, (unreported)**, he submitted. He insisted that the application should therefore be struck out.

Mr. Kamihanda for the 1st respondent submitting on the 1st objection, contended that, the applicants have no cause of action against the 1st respondent, the Attorney General of Tanzania. That, going through the the entire affidavit in support of the application, no single paragraph (from 1 to 16) establishes applicant's cause of action against the Attorney General or Office of the Attorney General. Therefore, the name of the Attorney General should be expunged from the records of this application for lack of cause of action against her.

In reply, Mr. Lugua for the applicants maintained that, it is now settled that if one raises that there is a wrong provision of law, he should point out the right provision. The counsel for the 2nd respondent did not tell the court the proper provision of law to be used as enabling provision in this application. Therefore, his argument is baseless, and the provisions so used in this application are proper. He insisted that the number of persons as appearing in the affidavit makes it mandatory to file a representative suit, that is the

reason they apply for the leave to file the interim orders pending lapse of statutory notice to sue the Government.

On the objection by the 1st respondent, it was argued that the same is misconceived as the affidavit has stated clearly the role of the police force in the dispute between the applicants and the 2nd respondent, therefore impleading the Attorney General is inevitable.

In rejoinder, Mr Laizer maintained that the application before this court is not about a permission to file a representative suit rather for restraining orders. The orders sought by the applicants are not supported by Order 1 rule 8 (1) of the Civil procedure, full stop.

Mr. Kamihanda on the other hand in his rejoinder submissions has insisted that, there is no cause of action against the Attorney General, if the police force participated in the dispute between the applicants and the 2nd respondent, then the proper party to be sued is the Inspector General of Police and the Attorney General by legal implication will be a necessary party in terms of s. 6(3) of Cap. 5 RE 2019n as amended by Act no 1 of 2020.

I have carefully considered the submissions of the learned counsels for both parties. The crucial issue at this juncture is whether the two objections here in above have merit or not. I will start with the 2nd objection that, the court has been wrongly moved.

It has already been settled that the applicant must cite the relevant provision of law which the court derives the power to hear and determine the application before it, short of that the application becomes incompetent **{see Saigon Shipping Ltd versus Mohamed Enterprises (T) Ltd supra}**. In the instant case, the applicants are seeking a permission from the court to represent other 26 persons in an interlocutory proceeding looking for a temporary injunction order pending the expiry of a 90 days' notice against the government. They have moved the court by using Order 1 Rule 8(1) of the Civil Procedure Code which provides that,

"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, 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."

Plainly, the above quoted provision gives permission to a person to represent others in a suit but not in interlocutory proceedings like what the applicants are intending to do. It therefore quite clear that, as rightly argued by Mr. Laizer, learned counsel for the 2nd respondent that the reliefs sought by the applicants are not accommodated in the provision so used as quoted above. In that case I agree with him that this court was wrongly moved and the

application is therefore incompetent (**see Saigon Shipping Ltd versus Mohamed Enterprises (T) Ltd (supra) and Global Beverages Ltd versus Registrar of Trade and Service Marks and Another, (supra).**

The 2nd objection is therefore allowed, and I will pen off here as there is no need to discuss the 1st point of objection, if the finding on the 2nd objection can dispose the entire application. I proceed strike out this application.

It is so ordered.



**M. P. OPIYO,
JUDGE
11/5/2021**