

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND CASE NO. 52 OF 2019**

**OSWARD PIUS KITALI, OSCA LUIS FABIAN,  
COLLETA AUGUSTINO ORDIRO AND 10 OTHERS.....PLAINTIFFS**

**VERSUS**

**TANZANIA ELECTRIC SUPPLY COMPANY LTD.....DEFENDANT**

**R U L I N G**

*Date of last Order:25/11/2021*

*Date of Ruling:10/12/2021*

**T. N. MWENEGOHA, J.**

The Plaintiffs prayed against the defendant for among others orders a declaratory order that Plaintiffs were not adequately compensated for unexhausted improvements they made in their pieces of land, which are located at Guluka Kwalala area, Gongo la Mboti Ward in Ilala Municipality in Dar es Salaam.

The pleading having been completed was forwarded for mediation. However, the case file was remitted back to me due to the raised concern by Mr. George Mwalali Advocate, that the suit had been filed in violation of the order of the Court for representative suit. This was not objected by the Counsel for Defendant Advocate Lauren Kyanikuka.

On the first day of mention after the remittance of the file Advocate George Mwalali for the Plaintiffs addressed me on what transpired during mediation, and prayed for time so that they can address the Court on the said irregularity raised.

Unfortunately, on the scheduled date the 1<sup>st</sup> Plaintiff notified this Court that their counsel had withdrew himself from representing them. They prayed for more time to find another advocate. It was granted.

On the scheduled day for hearing, the Plaintiffs appeared with Advocate Samson Lusumwo, and in the presence of Advocate Laurean Kyarukuka, hearing was conducted.

In his submission Mr. Lusumwo provided that there was an order of 28/03/2019 by Hon. Maghimbi of filing a representative suit and it is true that order was not complied. He stated that they still have a chance to implement that order by virtue of Section 3 A and 3 B and all subsections on overriding objective principle; and Section 95 of the CPC which gives discretion power of Court to decide without being held by technicalities.

He stated that the Advocate was negligent and he did not implement the order of this Court. He cited different authorities on applicability of overriding objective.

He pointed out despite of negligence cause by advocate, the clients should be given opportunity to be heard. He cited the case of **Musa M. Mohamed vs. TRC formerly known as Railways Accet Holding Co. at page P4, Case no. 653 of 2019; page 4.** He also prayed for the order issued by Hon. Maghimbi, J. be vacated and for the Plaintiff be given more time. He also prayed to change records and have 2 representatives.

In reply Mr. Kyarukuka submitted that the Plaintiffs admitted that the order 17/03/2019 of instituting representative suit and the aspect of publishing in well circulated newspaper of both English and Swahili has not been adhered to. He stated that since the order was not adhered to the matter before this Court is nullity which cannot be cured by what was prayed by the plaintiffs. He submitted that the only consequences is to strike out the case with costs so that parties can follow proper procedure.

In rejoinder Mr. Lusumwo reiterated his submission in chief and prayed for time to be allowed to comply with publication.

Having heard submission from both parties the issue for determination is whether this suit is a nullity.

From the submission of both counsel, I have noted that the Plaintiffs' counsel admitted that there was an order from this court for institution of the representative suit and the same to be published in a well circulated newspaper of both English and Swahili; the order that was not adhered to.

In the case of **P3525 LT Idahya Maganga Gregory vs. Judge Advocate General**, Court Martial Criminal Appeal No. 2 of 2002 (unreported) it was expressed that:-

*"Courts have not been soft with the litigants who fail to comply with court orders."*

See also the case of **Tanzania Harbours Authority vs. Mohamed R. Mohamed [2002] TLR 76.**

Applying the principles from the above cases, it should be noted that publication of notice of representative suit was a precondition before filing the representative suit and failure to observe the condition renders the suit a nullity. The Plaintiffs were bound to make sure that they adhered to the order of this Court.

I have noted that the advocate for the Plaintiff prayed for this Court to apply overriding objective principle. This Court find that the overriding objective principle cannot be applied in the circumstances of this case.

Moreover, the advocate for the Plaintiffs indicated that he also intended to have 2 representatives instead of four who were previous allowed. He also prayed for more time to be allowed to comply with publication order. I think the appropriate action is for this case to be started a fresh.

With aforesaid this matter is hereby struck out with no order as to costs.

It is so ordered.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**10/12/2021**