

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 616 OF 2020

**AUGUSTINE GEORGE.....1st APPLICANT
ANNY KOBERO.....2nd APPLICANT**

VERSUS

**UBUNGO MUNICIPAL COUNCIL.....1st RESPONDENT
HON. ATTORNEY GENERAL.....2nd RESPONDENT**

RULING

30/03/2021 & 22/04/2021

Masoud, J.

I was asked to grant leave to the applicants permitting them to sue on behalf of persons whose names are listed in the joint affidavit of the applicants supporting application. The application was resisted by the respondent who filed a counter affidavit.

The application was objected on two preliminary points of law. One, that names of those persons on behalf of whom a suit was sought to be instituted were not shown. And two, that there was no cause of action to implead the first respondent. The first point of objection having been abandoned, the parties herein argued and submitted in writing, with the leave of the court, on the second point only.

Looking at the rival submissions as a whole, the issue was whether the applicant has a cause action against the first respondent and whether the same can be determined as a preliminary point of law at this stage. Notably, the argument by the first respondent was that the disputed property belongs to the Registered Trustees of the Evangelistic Assemblies of God Tanzania via certificate of title No. DSMT1006507, who are not part to the present application and not the first respondent.

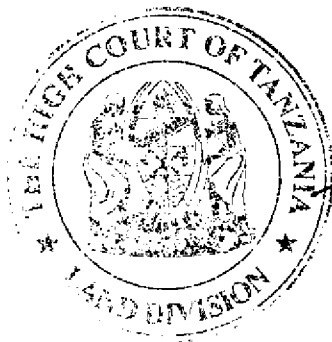
On the other hand, it was the submission of the applicant that the cause of action argument is one which can only be raised when the intended suit is filed, and not at the stage of this application. In relation to this submission, I was referred to the requirements applicable to an application for leave to file a representative suit. Order 1, r.8(1) of the Civil Procedure Code cap. 33 R.E 2019 was invoked.

It was also argued that the submissions by the first respondent were clear that the objection is a matter of evidence which cannot be disposed of as a preliminary point of law at this stage. It raises an issue of land ownership which is seemingly central to the interests of the applicant in the present application. There is no evidence adduced at the moment to enable the court determine the issue neither has such stage been reached.

I have closely looked at the application in the light of the rival submissions. I would agree with the argument of the applicant that the objection is unmaintainable at this stage of leave. Nonetheless, the argument advanced in relation to the objection calls for evidence and cannot therefore be competently determined at this stage of leave to file a representative suit.

In the upshot, the preliminary point of objection is dismissed with costs. It is so ordered.

Dated and Delivered at Dar es Salaam this 22nd day of April 2021.




B. S. Masoud
Judge