

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

**MISC. LAND APPLICATION NO. 106 OF 2023**

**BENJAMINI SAMWELY KITUNGUYE.....1<sup>ST</sup> APPLICANT  
LUCY PAULO KANISIO.....2<sup>ND</sup> APPLICANT  
NISHAEL ALPHAYO KILEO.....3<sup>RD</sup> APPLICANT  
ADILILA SAMWEL KONGA.....4<sup>TH</sup> APPLICANT**

**VERSUS**

**DAR RAPID TRANST AGENCY (DART).....1<sup>ST</sup> RESPONDENT  
KINONDONI MUNICIPAL COUNCIL.....2<sup>ND</sup> RESPONDENT  
TANZANIA NATIONAL ROAD  
AGENCY (TANROADS).....3<sup>RD</sup> RESPONDENT  
ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**R U L I N G**

*28/04/2023 & 28/04/2023*

**L. HEMED, J.**

The applicants brought this application under Order 1 Rule 8 (1) of the Civil Procedure Code [ Cap. 33 R. E. 2019], against the respondents, *inter-alia*, seeking for the following orders: -

- i. That, this Court be pleased to grant leave to MMMAplicants to file a representative suit*

- ii. Any other order(s) and directives as the Honourable Court may deem proper and expedient to grant in the circumstances.*
- iii. Costs be provided for.”*

The application is supported by the joint affidavit of **Benjamini Samwely Kitunguye, Lucy Paulo Kanisio, Nishael Alphayo Kileo** and **Adilila Samwel Konga**, the applicants. The respondents contested the application by filing a counter affidavit deponed by one **Debora Mcharo**, State Attorney, working in the office of the Solicitor General.

When the matter was called for hearing on 28<sup>th</sup> April 2023, the respondents could not appear without notice. In that regard, the Court decided to proceed exparte.

During hearing of the application **Ms. Miriam Majamba** and **Mr.Sylvanus Mayenga** learned advocates represented the applicants. They adopted the joint affidavit deponed by the applicants and stated that the applicants together with 61 other persons whose names and signatures are in the list annexed to the affidavit have common interests over the suit properties. They asserted that they are seeking leave to institute

representative suit to avoid multiplicity of suits and inconvenience to the respondents.

Having heard the submissions from the advocates for the applicants let me now turn to determine whether the application has merits. I have gone through the affidavit deponed to support the application and found that the applicants have stated that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have trespassed into their landed properties and are interfering, embarrassing and disturbing peaceful use and enjoyment of their proprieties. They have also stated that their efforts to have the matter settled amicably have remained futile, thus they intend to file a suit.

According to the applicants, they are more than 62 people in number with the same claim against the respondents and the evidence intended to be adduced is similar. Due to big number of the prospective plaintiffs, it was resolved through their meeting held on 15<sup>th</sup> October 2022 that they should institute a representative suit, hence the application at hand.

I am aware of the position of the law that, where numerous persons have the same interest, one or two may file an application for leave to sue

for and on behalf of others. This is pursuant to Order 1 Rule 8(1) of the Civil Procedure Code, Cap 33 RE 2019] which provides thus;

*"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 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 matter, the applicants seem to have common interests against the respondents as averred in paragraph 4 in the joint affidavit. The applicants and other 62 persons allege that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have trespassed into their pieces of land and are interfering, embarrassing, and disturbing them. The applicant also allege that their lands are in the process of being acquired for *mwendokasi* project without compensation.

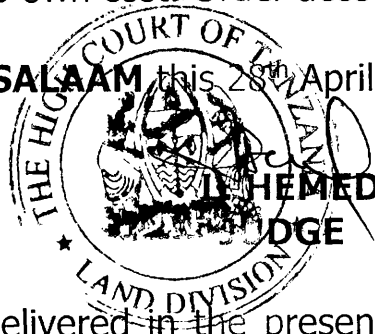
Having gone through the reasons advanced by the counsel for the applicants, and the facts presented in the affidavit supporting the application, I find merits in the application. In the circumstance, I proceed to grant the application and allow the applicants to institute a representative suit.

Consequently, in terms of Order 1 Rule 8(1) of the Civil Procedure Code, (*supra*), I direct the following;

- i. The applicants, **Benjamini Samwely Kitunguye, Lucy Paulo Kanisio, Nishael Alphayo Kileo and Adilila Samwel Konga**, shall institute a representative suit on behalf of themselves and others 58 persons.
- ii. Notice of the institution of the suit to all interested parties must be published *vide* widely circulated newspapers; one Swahili newspaper and one English newspaper.

Each party to bear its own cost. Order accordingly.

**DATED at DAR ES SALAAM** this 28<sup>th</sup> April 2023.



**COURT:** Ruling is delivered in the presence of Ms. Miriam Majamba and Syleanus Mayenga advocates of the applicants this 28<sup>th</sup> April 2023. Right of appeal explained

