

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

AT DAR ES SALAAM

MISCELLANEOUS LAND APPLICATION NO.580 OF 2023

FREDRICK NESTORY MAGEMBE 1ST APPLICANT
RAMADHANI HASSAN KANKA 2ND APPLICANT
HUSSEIN AMIR MANENO 3RD APPLICANT
UPENDO MALE 4TH APPLICANT
MBWANA AMIRI 5TH APPLICANT
SEIF SAID LUDEWA 6TH APPLICANT
GERALD MARTIN UNGELE 7TH APPLICANT

VERSUS

MARTIN NASSON OGWARI 1ST RESPONDENT
LOICE ERASTO NASSON 2ND RESPONDENT

06&27/11/2023

RULING

A. MSAFIRI, J.

This Application has been brought under Order I Rule 8 of the Civil Procedure Code, Cap 33 R.E 2019(herein the CPC) whereby the applicants are seeking for the leave to file a representative suit *Alte*

representing themselves together with other twenty eight (28) interested persons to sue the respondents.

To appreciate the nature and essence of the Application, the relevant background facts, albeit in brief, as discerned from the affidavit for and against the application together with the documents attached thereto are as follows; The applicants claims to be the lawful owners by way of sale, of the pieces of land/ houses located at Kulutini – Njia Nne, Mbondole Area, Msongola Ward, Ilala, Dar es Salaam, measuring 300-800 square meters in which the respondents have trespassed claiming ownership.

On 3rd June, 2022, and 19th March, 2021, the respondents under auspices of Court Broker by the name Yono Auction Mart, issued and served a fourteen (14) days' notice and notice of eviction/ demolition order to the applicants together with other twenty eight (28) interested persons to vacate the disputed land. The said notices are in respect of Execution No.29 of 2022 emanating from judgment and decree of this Court in Land Case No. 88 of 2017, in which the applicants were not part.

To safe guard their interests together with 134 others, they filed in the High Court of Tanzania (District Registry) at Dar es Salaam, an objection proceedings against the respondents vide Miscellaneous Civil

Atts.

Application No. 16 of 2022. On 28th April, 2023, the Court issued the ruling and drawn order against them; being dissatisfied they have instituted this Application.

Hearing of this Application proceeded by way of written submissions, where, the applicants were represented by Mr. Kennedy Steven Sangawe, learned advocate and the respondents were represented by Mr. Sylvivatus Sylvivanus Mayenga, learned advocate.

In support of the application, Mr. Sangawe submitted that, being aggrieved by the decision on objection proceedings, the applicants together with other 24 members, have consented through the Minutes of the members' resolution to be represented by the applicants.

He referred to Order I Rule 8 of the CPC and the case of **Abdalla Mohamed Msaka & 2 Others vs City Commissioner of Dar es Salaam & Two Others (1998) TLR** and stated that, the applicants have revealed reasons and established their interests and the interests of 28 people whom they want to represent by presenting the copy of the Minutes of the members' resolution to show their consent and also the copy of the ruling on objection proceedings and the sale agreement to show their interest in the suit. The applicants therefore prayed for the grant of this Application.

Alle

In reply thereof, Mr. Mayenga stated that the conditions set out under Order 1 Rule 8 of the CPC have not been met for the following reasons; **First**, he submitted that, the applicants stated in their affidavit that, Application No.16 of 2022 involved 134 persons, but, according to the attached ruling, Misc. Civil Application No. 16 of 2022 involved 123 persons. He stated further that, the respondents are not aware of Misc. Civil Application involving 134 persons as deposed in the affidavit.

Second; He submitted that, in terms of Misc. Civil Application No. 16 of 2022, the landed property in dispute was 100,000 square metres. In the present application, the applicants claims to be owners of 300-800 square metres. He stated that, the land claimed in the present application is by far similar with the one whose objection proceedings lodged.

Third; regarding the parties in the dispute, he referred to paragraph 5 of the respondents' counter affidavit and stated that, the sale agreement attached to the applicants' affidavit as annexure 1A differs with the list of names purported to be represented in the intended proceedings. He mentioned some few examples of the names in the list that does not tally with the attached sale agreements, such as 1st, 6th, 7th, 8th, 9th, 13th, 15th, 21st, 23rd, 28th, 29th and 33rd. He stated

Alles

further that, the signatures of the 7th and 13th names in the list differs with the one found in the sale agreement attached. He concluded that the conditions of filing a representative suit have not been met by the applicants. He prayed for the dismissal of the Application with costs.

In rejoinder submissions, Mr. Sangawe reiterated his submissions in chief and added that the case cited by the counsel for the respondents are distinguishable from this matter. He prayed for the Application to be allowed.

Having gone through the rival submissions for both parties, the issue for determination is whether this Application has merits.

This Application was brought under Order I Rule 8 of the CPC which provides as follows:-

O. I Rule 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 plaintiffs' 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 such the court in each case may direct." *Atle.*

The rationale of the above cited provision was stated in the case of **K.J. Motors and 3 others vs Richard Kishamba and Others**, Civil Application No. 74 of 1999, Court of Appeal of Tanzania at Dar es Salaam, thus: -

"The rationale for this view (meaning the contents of Order 1 Rule 8 of The Code) is fairly apparent. Where for instance, a person comes forward and seeks to sue on behalf of other persons, those other persons might be dead, non-existent, or otherwise fictitious. Else he might purport to sue on behalf of persons who have not, in fact, authorised him to do so. If this is not checked it can lead to undesirable consequences. The court can exclude such possibilities on by granting leave to the representative to sue on behalf of the person whom he must satisfy the court that they do exist and that they have dully mandated him to sue on their behalf."

Guided by the above position of the law, it is worth to note that, for the Application of the leave to file a representative suit to be granted, first, it must be established that the applicant's herein and 29 others have a common interest in the suit and are willing to join the suit and that, the applicants have the consent of the persons sought to be represented.

Alle

Starting with the requirement of the consent of the members, the applicants attached in their affidavit the Minutes dated 06/08/2023 which shows that 36 members including the applicants signed to authorise the applicants to file a suit in their behalf. That being the case, it is my findings that the applicants have the consent of 36 people who sought to be represented in the suit.

Regarding the requirement of the common interest in the suit, Mr Sangawe stated that, the applicants together with 24 members have established to have common interest in the suit by attaching to the Application, the ruling of objection proceedings in Miscellaneous Civil Application No. 16 of 2022 and the copies of their sale agreements.

I have gone through Annexure 1C, which is the ruling of Miscellaneous Civil Application No. 16 of 2022 and found that, it was Winfrida Magure & 122 Others, who sued the respondents herein and Yono Auction Mart & Co. Limited. The ruling does not disclose the names of the applicants herein nor the names of 24 other members subject of this instant Application. The ruling in Miscellaneous Civil Application No. 16 of 2022 have therefore nothing to prove that the applicants therein are the same as the applicants herein and 24 others. *Alls*

Regarding the sale agreements attached as Annexure 1A, I have found that, copies of the sale agreement of the 1st, 2nd, 3rd, 6th and 7th applicants were attached in the affidavit together with the copies of the sale agreement of Agnet Naftal, Ally Kinjachwile, Burhan Saleh, Deus Japhet, Grace Thadei, Karim Ngayunga, Cleofas Mramba, Paul Ng'itu, Said Masumpa, Salum Mwinyi, Ushindi Kalinga and Goodluck Mbilinyi. In the Minutes it was 36 members who consented for the filing of the representative suit. Only 17 members attached their copies of the sale agreement, 19 other members despite of having signed the minutes, have not attached the sale agreement to prove their interest in the suit. In my view, I find that, only the above mentioned people have successfully established to have interest in the suit, the rest have failed to prove the same.

In the premises I find that only seventeen (17) members have successfully met the conditions set out under Order I Rule 8 of the CPC for the grant of the leave to file a representative suit. The rest have failed to comply with that important legal requirement.

In the event, the leave to file a representative suit is hereby granted to the 1st, 2nd, 3rd, 6th and 7th applicants to represent Agnet Naftal, Ally Kinjachwile, Burhan Saleh, Deus Japhet, Grace Thadei, Karim

Alle.

Ngayunga, Cleofas Mramba, Paul Ng'itu, Said Masumpa, Salum Mwinyi,
Ushindi Kalinga and Goodluck Mbilinyi.

Application granted to such extent. Each party to bear its own
costs.

It is so ordered.



A. MSAFIRI

JUDGE

27/11/2023