

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 39 OF 2023

ABILLAHI RASHIDI SADI.....1ST APPLICANT

SEFU ALLY LUWEMBE.....2ND APPLICANT

VERSUS

KIBAHA DISTRICT COUNCIL.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

21/02/2023 & 28/02/2023

A. MSAFIRI, J

This is a ruling in respect to the application for representative suit filed on 26th day of January, 2023 and supported by the joint affidavits of Abillahi Rashidi Sadi and Sefu Ally Luwembe hereinafter the applicants.

On 21st day of February, 2023 when this matter was fixed for hearing, Mr. Mutalemwa Bugeza, appearing for the applicants submitted briefly that, this is an application for representative suit made under Order 1, rule 8 (1) of the Civil Procedure Code [Cap 33 R.E 2019], (the CPC).

He submitted further that, the applicants are seeking for an order of this Court for leave to represent their fellow 97 villagers who have been named

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at paragraph 3 of their joint affidavit since their claims over the landed property arises from the same transaction. To support his submission, he referred this Court to the case of **Kiteria Menezi & 33 Others vs. Afra Engineering Work Ltd & Another**, [1998] TLR at page 434, where conditions for filing representative suit were set.

He added that, since the applicants have complied with the procedure and conditions set, they pray that the prayers sought as per the chamber summons be granted in order for them to proceed to institute the main suit.

Mr Salehe Manoro, State Attorney also appearing for both respondents, did not oppose the application.

Having heard the counsel for the applicants' submissions, and gone through the joint affidavit of the applicants and attached annexures, the major issue is whether the applicants has fulfilled the conditions set under Order 1 Rule 8 of the CPC.

Order 1, Rule 8 (1) of the CPC, 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

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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". (emphasis added).

From the gist of the above provision, it is true that, there are 97 residents from the hamlets of Kilangalanga, Mtambani, Mtongani and Njiapanda JKT who are willing to be represented by the applicants and have shown their willingness vide the Minutes of their meeting dated 27/09/2022, annexed to the joint affidavit. In the said meeting, the said residents have each signed the attendance.

Additionally, the said residents who are to be represented by the applicants in the said minutes have the same interest over the landed property and in the intended suit. Lastly, the leave sought by the applicants is again incorporated in the affidavit and submissions by applicant's counsel.

In the case of **Grace Lobulu & Others vs. National Health Insurance Fund (NHIF) & Another, Misc. Application No. 172/ 2019,**

(Unreported), Mwipopo, J had this to say at page 8 with regard to O.1, *Allo*

r.8 of the CPC which is *pari materia* to rule 44 (2) of the Labour Court Rules GN. No. 106 of 2007 that:

"In applications for representative suit the applicants have to prove that they are having the same interest in the suit and that they have appointed one or more persons to appear and be heard or defend in such dispute on behalf of or for the benefit of all interested persons".

See also the case of **Director, Rajani Industries Limited vs. Ally Kanuwa & 26 Others, Civil Appeal No. 98/ 2009** CAT-DSM at page 7 and 8 to that effect.

For reasons alluded above, this Court is satisfied that the applicants has fulfilled the conditions set by the law on the representative suits. I proceed to grant the application with no order as costs.

Order accordingly.



A. MSAFIRI

JUDGE

28/02/2023