

IN THE HIGH COURT OF TANZANIA

AT ARUSHA

CIVIL CASE NO. 16/2002
(MISC.CIVIL APPL. 55 & 56 of 2002)

LOSERIAN LAVUTAKI AND SIXTY NINE OTHERS...PLAINTIFFS/APPLICANT
VERSUS
MINISTER

1. THE MINISTER FOR LANDS HOUSING AND URBAN DEVELOPMENT

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.....DEFENDANTS/RESPONDENTS

2. THE ATTORNEY GENERAL OF TANZANIA

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RULING

R. SHEIKH, J.

This is an application by the applicants/plaintiffs, Loserian Lavutaki and 69 others for an order that leave be granted to Loserian Lavutaki to sue on behalf of about 69 other peasants of Suye Village. The application was brought under Order I Rule 8 of the Civil Procedure Code Act, 1966 and was filed in court on 2nd May, 2002. It was supported by the affidavit of Loserian Lavutaki himself, and para 5 of the affidavit states the actual list of the persons will be supplied before the hearing of the suit and summons applied for and served to the other plaintiffs.

The Attorney General resisted the application by filing a Notice of preliminary objection and has raised the following two preliminary objections on points of law.

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- (a) The application is incurably defective for failure to issue the statutory 90 days' notice before preferring Civil Case No 16 of 2002 on which this application is based and/or before preferring the application at hand as required by the provisions of the Government proceedings Act, 1967.
- (b) The application is bad in law for being based on the suit which was instituted in contravention of Order I Rule 8 of the Civil Procedure Code, 1966.

In his written submissions Mr. Munuo, learned counsel for the applicant, contended that an intended suit in respect of ~~proposed~~ person ought to be instituted by an interested party before seeking leave of the court and that the granting of leave by the court is more of form than substance, and that this application is proper.

In reply, the learned State Attorney basically contended that the application for leave is bad in law as the ^{purported} ~~representative~~ suit to wit Civil suit No 16/2002 had already been filed without leave, the purported representative suit is incompetent because the mandatory provisions of order I Rule 8 of the Code had not been complied with, and that leave ought to have obtained prior to instituting Civil Case No. 16/2002, on which this application is ~~based~~.

Secondly, the defendant is contending that both the applicant and suit No. 16/2002 (the suit) are bad in law because they were filed without ^{prior} ~~concerned~~ notice of not less than 90 days to the Government institution ^{concerned} of the intent to sue the government as required

by the mandatory provisions of the Government Proceedings Act, 1967 as amended, and in particular, that there was no evidence of Notice having been issue to the Minister for lands - the 1st Respondent/
^{Much}
 defendant. [✓] has been submitted by messers. Munuo and Materu learned counsels for the applicants and Respondents respectively.

Mr. Munuo argued that Notice was duly ^{served} on the Attorney General and that was effective service on the 1st Respondent as well as the Attorney General who is the principal Government legal officer charged with the duty of overseeing legality on all matters pertaining to Government departments.

With all due respect I am unable to accede to this argument by Mr. Munuo.

Section 6(2) of the Government Proceedings Act 1967 as amended by Act 30 of 1994 states:

No suit against the Government shall be instituted, and heard unless the claimant previously submits to the Government Minister, Department or officer concerned a notice of not less than ninety days of his intention to sue the Government, specifying the basis of his claim against the Government, and he shall send a copy of his claim to the Attorney General."

In view of the mandatory provisions of the aforesaid section clearly service of the Notice on the Attorney General does not satisfy these Mandatory provisions requiring prior notice of 90 days to be served upon the Government Minister, Department or

institution concerned and in the instant case, the Minister for
 Attorney General.
 Lands Housing and Urban Development, with a copy thereof to the

See the
 decision in High Court Civil Case no. 273 of 2000 Protace Mugongo
 secretary
 v. The Attorney General and the Principal Ministry of Home
 affairs where it was held that a notice under section 6(2) of the
 Government proceedings Act, ought to have been addressed to the Minis-
 try of Home Affairs whose officers instigated the alleged malicious
 prosecution (wrong complained of) and a copy sent to the Attorney General.

Moreover the suit was filed on 2/5/2002 while the letter addressed
 to the Attorney General which purports to be a notice is undated. In
 my view therefore the suit itself is unsustainable as well as
 for
 this application failure to issue the statutory notice before preferring
 Civil Case no 16 of 2002.

As regards the second ground of objection it is undisputed
 that the applicant^{1st} Plaintiff has purported to file the aforesaid
 Civil suit no. 16 of 2002 on behalf of other members of his Village
 and therefore the suit itself is incompetent in law for having been
 filed without leave i.e without adopting the procedure laid down in
 order I Rule 8 of the Civil procedure code 1966, for instituting
 representative suits. See the decisions in the (1) Lujuna Shuba
 Ballouzi Senior v. Registered Trustees of Chama cha Mapinduzi (1996)
 T.L.R. 203 and (2) Christopher Gasper and others against Tanzania
 Harbours Authority (1997) T.L.R. 301.

This application itself cannot stand as it was filed on
 2/5/2002 apparently simultaneously with the purported Representative

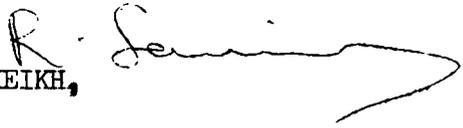
suit Civil Case no. 16 of 2002 which was also instituted on 2/5/2002.

I entirely disagree with the applicant's contention in paragraph 2 of Mr. Munuo's

written submissions that "an institution of the intended suit ought to be done by the party before seeking leave or permission of the Court". This is a gross misconstruction and misapplication of the clear and mandatory provisions of Order I Rule 8(1). which rule expressly provides " 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"

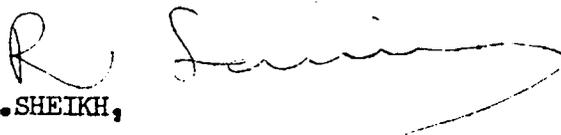
A person cannot purport to institute (as the applicant has done) a representative suit without first obtaining leave of the court to bring such suit. When such suit is instituted without leave it must be struck out for being incompetent in law.

For the above reasons both grounds of the preliminary objection are sustained, and accordingly both the purported Representative suit and the application for leave are struck out for being incompetent in law. The Respondents/defendants will have their costs.

R. SHEIKH, 

JUDGE.

Ruling read in Chambers this 4th day of December 2003 in the
presence ^{of r} /Loseian Lavutaki & 8 others and in the presence of Mr.
Mzikila State Attorney and in the absence of Mr. Munuo Advocate.


R. SHEIKH,

JUDGE.

4/12/2003.

RS/mm.