

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB-REGISTRY

CIVIL CASE NO. 208 OF 2023

1. **JOHN MATHIAS CHAMBI**
2. **ANDONDILE MWAKASYUKA KALIBOTI**
3. **ASUMWISYE MWAISAB1LA MWAKITABU**
4. **ROBERT NGAI**
5. **JACOB CHACHA**
6. **ASSADYMWAMBETE**
7. **PAUL BUSUNGU**
8. **JULIUS MBARAKA MHUMPA**
9. **JAMES IBRAHIM SHWILI LI**
10. **SYLVESTOR DODO NSOLO**
11. **AUGUSTINO IS AKWIS A MWAKATAGE**
12. **NAAMAN SHAUR1**
13. **BENSON KITONKA**
14. **JULIO RAPHAEL USUKWA**
15. **SAMWEL BUND ALA**
16. **YUSUFU HUSSEIN KAYUMBANGURA**
17. **EMMANUEL SAMSON KIMBULU**
18. **ELISHA ALEX SEBASTIAN**
19. **STEVEN KASHINDYE MAY ALA**
20. **EMMANUEL ISMAIL CHELESI**
21. **MARCHERO REMIJO NYAULOVA**
22. **MARCO MLAGAL1LA HOMANGE**
23. **ELIA WILLIAM MASHAKA**
24. **CLEMENT LUJAJI**
25. **PIUS MWINUKA**
26. **YUSUFU TEGEJA MAGESA**
27. **ZABLON AMAN1NDUME**
28. **AGNESS MWAR1ZO**
29. **JONAS MAHENDE**
30. **MATHIAS LUTTA**
31. **ELIA PETRO**
32. **AMOS FUMBUKA**
33. **ERNEST K1PETA**
34. **JACKSON NKENE**
35. **AMOS JOHN SINDIYO**
36. **SOLOMON ALEXANDER MGUNDA**
37. **OMBENIKINYATA**
38. **PETER CHARLES KASWIZA**

PLAINTIFFS

39. KASEA KISANJ1 DAUDI
40. ELEK1EL CHARLES MADUHU
41. ELIAS TITO MPALAM1NO
42. JOHN DANIEL L1ANGA
43. DANIEL MANGA
44. SOSPETER GAL1LA KAKENGELA
45. NOPHEL AMULIKE MWAK1TEKA
46. KENNEDY RWAYA
47. JOSEPH EXAVERY
48. WILLIAM RAPHAEL IGOGO
49. ANDREW PESA MWANSASU
50. IBRAHIM PAUL SASI
51. ADAM MSWELO
52. DAUDI BUKUKU
53. JOSEPH SIAME
54. PETER AMON RWIZIGE
55. DAUSON MCHISHAHAYO KANYAMASWA
56. METHOD MARCO BAZ1RIRUNAZI
57. SOSTENES MIHAYO
58. LUKAS SEKEI
59. TADEI KADEGE
60. JAMES MKALI
61. JACKSON BUJEGE
62. BARAKA ODEMBA
63. SIMON MARCEL
64. WILLIAM SALALA
65. JOHN MABULA
66. PAUL SANGA
67. EMMANUE KABOMBWE
68. HENRY JAMES MALILAH
69. JULIUS EMMANUEL NKWAMA
70. PAUL ANJELEMU LINDU
71. EMMANUEL MACHELA CHACHA
72. MUSS A MOHAMED TANGANI

PLAINTIFFS

VERSUS

**THE REGISTERED TRUSTEES OF THE EVANGELISTIC
ASSEMBLIES OF GOD – TANZANIA.....1ST DEFENDANT**

BISHOP BROWN MWAKIPESILE.....2ND DEFENDANT

RULING

Date of Last order: 26/02/2024

Date of Ruling: 12/04/2024

B.K PHILLIP, J

This ruling is in respect of concerns raised by this court on the competency and propriety of this case, that is, whether this suit is a representative suit and proper before this court, and the point of the preliminary objection raised by the advocate for the defendants, to wit;

- That the plaintiffs have no locus standi to sue and claim interests in the 1st defendant properties (the churches).

Briefly, this case involves disputes between two groups of congregations that formally were worshipping together and were one congregation under the Evangelistic Assembly of God- Tanzania a church duly registered by the Registrar of Societies. However, sometimes in 2016 differences and misunderstandings cropped up among them thus, the congregation split into two, and thereafter quarrels on the use and ownership of the properties which were formally used jointly before the congregation was split into two groups ensued. Numerous measures were taken to resolve the disputes between the two groups including the meeting held by the Registrar of Societies but in vain. It is alleged in the plaint, among other things that on 13th July 2022, the 1st and 2nd defendants wrote a letter to the plaintiffs threatening them and gave them ultimatum of three months from the date of that letter to 20th October 2022 to either apologize to the 2nd defendant

and continue to work under him or quit from Evangelistic Assemblies of God – Tanzania. The congregation from the 1st and 2nd defendants’ wing are trying to illegally occupy the churches under the possession of the plaintiffs. The plaintiffs through the legal services of the learned Advocate Johnson Johanes Kachenje of Greenwich Law Attorneys lodged this case praying for the several reliefs among them being a declaration that the 2nd defendant or any of his officials had no power to issue the letter dated 13th July 2022.

The defendant through the legal services of the learned advocate Andrew Miraa of Cetha and Sons Attorneys a filed joint written statement of defence in which they disputed all of the plaintiffs’ claims and raised a point of preliminary objection I have reproduced at the beginning of this Ruling.

Upon perusing the plaint, I noted that it was signed and verified by two the 1st and 2nd plaintiffs only out of 72 plaintiffs. The plaint indicates that it was signed by two plaintiffs mentioned herein above on behalf of the rest plaintiffs which connotated that the suit is a representative suit and the 1st and 2nd defendants are prosecuting it on behalf of other plaintiffs. Being aware of the procedures for filing a representative suit, I found it prudent to order the advocate for the plaintiffs to address this court on the two concerns stated at the beginning of this Ruling.

For convenience, I ordered the concerns raised by the court and the point of the preliminary objection raised by the defendants’ advocate to be argued together by way of written submission. However, since the court’s concerns touches on the propriety and competency of the case have to be determined

first. In his submission, the learned Advocate Kachenje conceded that the plaint is defective because the verification was signed by two plaintiffs only whereas no leave was sought and obtained from this court to file a representative suit. After conceding that the plaint was not properly verified, he was quick to ask for an amendment of the plaint.

In rebuttal, Mr. Miraa argued that the law prohibits pre-empting a point of preliminary objection already raised by praying for an amendment of the pleadings to rectify the mistake pointed out by the adverse party. He cited the case of **Kilempu Kinoka Laizer Vs Hai District Council and Another, Land Case No. 21 of 2014**, (unreported) to cement his arguments. He was of the view that this case deserves to be struck out since the plaintiffs' purported representative suit was filed without leave of the court in contravention of Order 1 rule 8 of the Civil Procedure Code, (The "CPC"). Mr. Miraa submitted further that the principle of overriding objective cannot be applicable in this case since the plaintiffs have contravened the mandatory legal requirements on the filing of a representative suit.

As correctly pointed out by Mr. Miraa, the plaintiffs' purported representative suit was filed in contravention of the provisions of Order 1 Rule 8 of the CPC. The position of the law is that a party intending to file a representative suit must seek and obtain leave of the court. Upon obtaining the leave of the court only the names of the selected representative(s) appear in the plaint and the verification clause is signed by the representatives only.

For ease of reference let me reproduce the provision of Order 1 Rule 8 pf

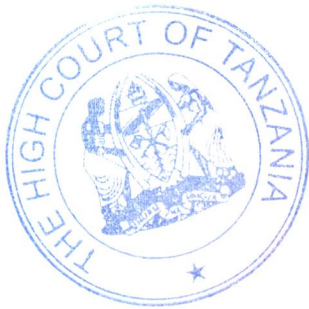
the CPC hereunder;

Order 1 Rule 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. (2) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the court to be made a party to such suit.*

Since Mr. Kachenje has conceded to the concerns raised by this court that the suit is not proper before this, thus incompetent, I agree with Mr. Miraa that this suit deserves to be struck out. The prayer for amendment of the plaint is misconceived since the remedy for incompetent suit is not amendment of the pleadings. As alluded to earlier in this ruling this suit has been filed as a representative suit without the leave of the court. The verification clause in the plaint and the application for maintenance of *status quo* (Miscellaneous application No. 597/2023) pending the hearing of this suit, file by the plaintiffs indicates clearly that this suit has been filed as representative suit in which the 1st and 2nd plaintiffs are representatives of the rest of the plaintiffs. Thus, there is no room for amendment of this suit. The plaintiffs are supposed to comply with the requirements of the law stipulated in Order 1 Rule 8 of the CPC.

Having made the above findings, I cannot deal with Mr. Miraa's submission in support of the point of preliminary objection. Thus, I hereby strike out this suit. Each party will bear his costs since the suit has been struck out on the point raised by this court *suo motto*.

Dated this 12th day of April 2024




B.K. PHILLIP
JUDGE.