

TANZANIA / JUDGMENT

saulo makungu and 18 others vs busirime village council and 2 others 2021 tzhc 7196 15 november 2021

COURT
TZHCDECIDED
15 November 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MUSOMA SUB REGISTRY AT
MUSOMA MISC. CIVIL APPLICATION NO 29 OF 2021 SAULO MAKUNGU AND 18
OTHERS..... APPLICANTS VERSUS BUSIRIME VILLAGE
COUNCIL..... 1stRESPONDEN BUTIAMA DISTRICT
EXECUTIVE DIRECTOR..... 2ndRESPONDEN ATTORNEY
GENERAL.....3rdRESPONDEN

RULING

11th November and 15th November, 2021 F. H. MAHIMBALI, J.: The applicants, in this application are seeking leave of this Court for them to be represented by Mr. Saulo Makungu in their intended suit to be filed in this court. The application is brought by way of chamber summons under orderl rule 8 (1) of the CPC supported by the joint affidavits of the applicants. During the hearing of the application, the applicants appeared on behalf of the first applicant whereas the respondents enjoyed the legal services of Mr. Lyakurya, learned state attorney. 1 Arguing in support of the application the first applicant submitted on behalf of the 18 applicants that they are intending to file a suit against all the respondents in this court. They are 19 applicants in total. The respondents are dully served with the said statutory notice of 90 days. That following the nature of the intended claim and that they all belong to the same family and that it is the family property having common interests in it, thus the applicants (family members) are requesting this court to allow this application and make the 1st applicant their representative in the intended suit to be filed against the respondents. In line with this submission he prayed that the joint affidavit of the applicants be adopted to form part of their submission. On the other hand, Mr. Lyakurya in consideration of the submission and joint affidavit of the applicants, he submitted that there are no any valuable grounds by law established for this application to be allowed. The main reason as to why he should be their representative, is simply because they are many (19). The reason that they are many, is not a sound ground that he should represent them. In such an application, the applicant is supposed to establish that himself and those to be represented have common interests. Being members of one family is not a necessary ground of common interests. There can be members 2 of the same family, but yet don't share a common

interest. As they have failed to establish that they share a common interest, there is a danger of a dispute arising in future that they don't have common interest and that the 1st applicant cannot represent them. As he failed to establish "the common interests", this application be struck out with costs, he submitted. In his rejoinder submission, the first applicant on behalf of those others reiterated his submission in chief that by this application and the joint affidavit duly deposed and forming part of this application, then common interest is within it and it is established. He thus prayed the Court to allow the application. Having heard the submission of both parties' counsel for and against this application, the issue for determination by this court now is whether this application is meritorious to grant. In determination of the issue, the relevant law providing for application for representative suit is Order 1, Rule 8(1) of the CPC. The rule provides that, I quote;- "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 3 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". From the above cited rule, it is an established principle that a person can only act as a representative and initiate proceedings on behalf of others with the same interest after he or she has obtained leave of the Court. In the case of Kiteria Manezes and 33 Others vs. Area Engineering Work Ltd and The Attorney General [1998] TLR 434, it was held inter alia that; "...A pre-condition to filing a representative suit is that an application for leave to file such suit has first to be made..." Also, in the case of Abdallah Mohamed Msakandeo and Others versus City Commission of Dar es Salaam and Two Others (1998) TLR 439, the Court was of the view that the law requires an application for leave to file a representative suit to establish that numerous persons are similarly interested in the intended suit and they are willing to join in it. From the above position, the mere existence of numerous persons in the suit does not suffice the grant to leave to file a representative suit. The Applicants have to show their willingness 4 to be represented by one or several of them. The Applicants herein have shown that they are willing to be joined in the intended suit and the same have consented to be represented by Saulo Makungu by appending their signatures in the chamber summons and their joint affidavit. The Applicants also have shown that they have the same interests they are intending to institute a land case in which they are the intended plaintiffs. The Respondent's submission that the Applicants do not have the same interest has no basis for the reason that the Applicants intend to claim their land rights which they jointly have similar rights. Thus, they have exhibited the same interest in their intended suit. However this is without disregard each one expressing his or her own interests during the trial of the case, (see National Agricultural and Food Corporation V. Mulbadow Village Council and Others (1985) TLR 88 (CA)) where the Court of Appeal of Tanzania had an opportunity to decide on the representative suit of 66 villagers where it held "A person may act and represent another person, but we know of no law or legal enactment which can permit a person to testify in place of another. All that P. W.3 could say was that he was told by certain claimants as to the facts of their claims, and what was said was listed I accordingly. That is pure hearsay..." 5 Therefore, I find that the Applicants have met all the condition set under Order I, Rule 8 of CPC (supra) and the application is allowed. Mr. Saulo Makungu is hereby appointed to

represent the other 18 Applicants herein in their intended suit to be filed in this court. Nevertheless, he is hereby charged to make sure that the all intended plaintiffs get notice of the institution of the intended suit either by personal service or any other cause such as is reasonably practicable or by public advertisement. Costs to follow the event in the intended suit to be filed. DATED at MUSOMA this 15th day of November, 2021. Court: Ruling delivered this 15th day of November, 2021 in the presence of the appellant, Mr. Gidion - RMA and the respondent being absent. F.H. Mahimbali JUDGE 15/11/2021

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