

TANZANIA / JUDGMENT

benjamini samwely kitunguye others vs dar rapid transt agency dart others 2023 tzhclandd 16527 28 april 2023

COURT
TANZLIIDECIDED
28 April 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES
SALAAM MISC. LAND APPLICATION NO. 106 OF 2023 BENJAMINI SAMWELY
KITUNGUYE.....1st APPLICANT LUCY PAULO KANISIO..... 2nd
APPLICANT NISHAEL ALPHAYO KILEO..... 3rd APPLICANT ADILILA
SAMWEL KONGA..... 4th APPLICANT VERSUS DAR RAPID TRANST AGENCY
(DART).....1st RESPONDENT KINONDONI MUNICIPAL COUNCIL..... 2nd
RESPONDENT TANZANIA NATIONAL ROAD AGENCY (TANROADS)..... 3rd
RESPONDENT ATTORNEY GENERAL..... 4th RESPONDENT

RULING

28/ 04/2023 & 28/ 04/2023 L. HEMED, 3 . The applicants brought this application under Order 1 Rule 8 (1) of the Civil Procedure Code [Cap. 33 R. E. 2019], against the respondents, inter- alia, seeking for the following orders: -

- i. That, this Court be pleased to grant leave to MMMAplicants to file a representative suit i ii. Any other order(s) and directives as the Honourable Court may deem proper and expedient to grant in the circumstances. Hi. Costs be provided for." The application is supported by the joint affidavit of Benjamini Samwely Kitunguye, Lucy Paulo Kanisio, Nishael Alphayo Kileo and Adilila Samwel Konga, the applicants. The respondents contested the application by filing a counter affidavit deponed by one Debora Mcharo, State Attorney, working in the office of the Solicitor General. When the matter was called for hearing on 28th April 2023, the respondents could not appear without notice. In that regard, the Court decided to proceed exparte. During hearing of the application Ms. Miriam Majamba and Mr.Sylvanus Mayenga learned advocates represented the applicants. They adopted the joint affidavit deponed by the applicants and stated that the applicants together with 61 other persons whose names and signatures are in the list annexed to the affidavit have common interests over the suit properties. They asserted that they are seeking leave to institute representative suit to avoid multiplicity of suits and inconvenience to the respondents. Having heard the submissions from the advocates for the applicants let me now turn to determine whether

the application has merits. I have gone through the affidavit deposed to support the application and found that the applicants have stated that the 1st and 2nd respondents have trespassed into their landed properties and are interfering, embarrassing and disturbing peaceful use and enjoyment of their properties. They have also stated that their efforts to have the matter settled amicably have remained futile, thus they intend to file a suit. According to the applicants, they are more than 62 people in number with the same claim against the respondents and the evidence intended to be adduced is similar. Due to big number of the prospective plaintiffs, it was resolved through their meeting held on 15th October 2022 that they should institute a representative suit, hence the application at hand. I am aware of the position of the law that, where numerous persons have the same interest, one or two may file an application for leave to sue for and on behalf of others. This is pursuant to Order 1 Rule 8(1) of the Civil Procedure Code, Cap 33 RE 2019] which provides thus; "8.-(1) Where there are numerous person having the same interest in one suit\ one or more o f such persons may, with the permission o f the court; sue or be sued, or may defend, in such suit, on behalf o f or for the benefit o f all persons so interested; but the court shall in such case give, at the plaintiff's expense, notice o f the institution o f the suit to all such persons either by personal service or, where from the number o f persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct". In the present matter, the applicants seem to have common interests against the respondents as averred in paragraph 4 in the joint affidavit. The applicants and other 62 persons allege that the 1st and 2nd respondents have trespassed into their pieces of land and are interfering, embarrassing, and disturbing them. The applicant also allege that their lands are in the process of being acquired for mwendokasi project without compensation. Having gone through the reasons advanced by the counsel for the applicants, and the facts presented in the affidavit supporting the application, I find merits in the application. In the circumstance, I proceed to grant the application and allow the applicants to institute a representative suit. Consequently, in terms of Order 1 Rule 8(1) of the Civil Procedure Code, (supra), I direct the following;

- i. The applicants, Benjamini Samwely Kitunguye, Lucy Paulo Kanisio, Nishael Alphayo Kileo and Adilila Samwel Konga, shall institute a representative suit on behalf of themselves and others 58 persons. ii. Notice of the institution of the suit to all interested parties must be published vide widely circulated newspapers; one Swahili newspaper and one English newspaper. Each party to bear its own cost...Order accordingly. DATED at DAR ES SAT^AlCSis>^^Dril 2023. COURT: Ruling is deliveri^m4fe Dresence of Ms. Miriam Majamba and Syleanus Mayenga ad^f\$tg^of the applicants this 28th April 2023. Right of appeal explained^

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