

TANZANIA / JUDGMENT

LAND APPLICATION NO

COURT
TANZLII

DECIDED
1 January 2024

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA THE SUB-REGISTRY OF MOSHI AT
MOSHI LAND APPLICATION NO. 13361 OF 2024 ISSA RAJABU

MGALA:.....1ST APPLICANT KIMANGANO LEONARD
MDEE:.....2ND APPLICANT ATHUMANI JAKOB
MWANGA:.....3RD APPLICANT SAIDI RAISHIDI
NDOILE:.....4TH APPLICANT ABJADI LAWENA
MKWIZU:.....5TH APPLICANT PAULI EDUADI
MAGWERO:.....6TH APPLICANT RAMADHANI HOSENI
JUMA:.....7TH APPLICANT ADAM RAMADHANI
MAHANYU:.....8TH APPLICANT BEATRICE PHILIP
MSOFE:.....9TH APPLICANT MACHAKU ALI
MDEE:.....10TH APPLICANT VERSUS TANZANIA AIRPORT
AUTHORITY :.....1ST RESPONDENT KILIMANJARO AIRPORTS DEVELOPMENT
COMPANY ORGANISATION:.....2ND RESPONDENT COMMISSIONER FOR LAND
PERMANENT SECRETARY MINISTRY OF WORKS:.....3RD RESPONDENT HON.ATTORNEY
GENERAL:4TH RESPONDENT

RULING

7th August 2024. A.P. KILIMI, J. The applicant Issa Rajabu Mgala and nine (9) others are in this Court praying for leave to file Representative suit on behalf of three hundred twenty-eight (328) other villagers against the respondents 1 herein. This application is being brought under Order 1 Rule 8 (1) of the Civil Procedure Code, Cap 33 R.E 2019 and any other enabling provision of the laws and it is supported by a joint affidavit of the applicants. The grounds gathered as per the applicant’s affidavit are that, they are three hundreds and twenty Eight (328) people and wishes to sue the respondents herein for the illegal trespass onto their land. They stated that they have tried to settle the matter amicably with the respondents without a success and that their evidence they intend to present at the intended land case are similar. That being a large in number, they resolved in a meeting held on 10th March 2024 and successful appointed the applicants herein to represent the other three hundred and eighteen

(318) individuals in the intended land case. When this application came before me for necessary orders, Ms. Francisca Lenguju learned advocate appeared for the applicants while Ms. Glorian Issangya and Ms. Dommy Rimoy both learned state Attorneys appeared for the respondents. Ms. Francisca stated that the applicant's was not yet to be served with the counter affidavit, so as to proceed with the necessary orders of the court and in reply Ms. Glorian learned State Attorney stated that the 2 respondents were not intending to file a counter affidavit because they had no objection with the applicant's application. Having considered the brief arguments and the facts disposed in a joint affidavit of the applicants and taking note that the respondents learned state attorney is not contesting this application, the issue is whether the application at hand meets the legal requirement enough for this court to grant leave for the applicants to file a representative suit. An application for representative suit is governed by Order 1 rule 8(1) of the Civil Procedure Code Cap 33 R.E 2019. The said provision provides that; "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." 3 From the above provision, leave to file a representative suit ought to be first sought and the applicants are to establish that the person they are intending to represent have the same interest to sue as them and are willingly to join. The decision of K. J. Motors and 3 Others Vs. Richard Kishamba and Others, Civil Application No. 74 of 1999, at Dar es Salaam, (unreported) Court of Appeal stated the rationale of the representative suit in terms of the above cited provision, it was held that; "The rationale for this view (meaning the contents of Order 1 Rule 8 of The Code) is fairly apparent. Where for instance, a person comes forward and seeks to sue on behalf of other persons, those other persons might be dead, non-existent, or otherwise fictitious. Else he might purport to sue on behalf of persons who have not, in fact, authorized him to do so. If this is not checked it can lead to undesirable consequences. The court can exclude such possibilities only by granting leave to the representative to sue on behalf of the person whom he must satisfy the court that they do exist and that they have duly mandated him to sue on their behalf." 4 Thus as per the guided authority and in the application at hand, before granting leave to file a representative suit, it must be established that; One, applicants herein and 318 others have a common interest in the suit and are willing to join in the suit. Two that applicants have the consent of the persons sought to be represented. Revisiting paragraph 3, 4, 5 and 6 of the applicants' joint affidavit, they have averred that; "3. That, our efforts to have the matter settled amicably have been futile. We thus intend to file a suit against the respondents to challenge respondents' illegal trespass into our land."

4. That we are three Hundred and Twenty -Eight

- (328) people with the same claim against the Respondents. The evidence we intend to present is also similar. Given the number of Plaintiffs, it is required by the law to obtain leave to represent others before filing a suit in Court,
5. That, due to big number of the Plaintiffs, it was resolved in our meeting held on 10th March 2024 we (applicants herein) were successful appointed to represent the other Three Hundred and Eighteen (318) individuals in the intended Land case. (A copy of the minutes dated 10th March 2024 and a list of names are annexed herein for ease of reference)
 6. That, if the prayers sought in Chamber Summons will not be granted the applicants and their fellow villagers will suffer irreparable loss.” Through such quoted paragraphs of the applicants’ joint affidavit, it is clear that the applicants on behalf of other 318 individuals are 5 intending to sue the respondents in order to challenge the respondents’ illegal trespass onto their land. Further as per paragraph 5 the applicants have stated to have been appointed by such individuals to represent them on the said suit and upon perusing the attached minutes and lists of names they have placed their signatures. The applicant has also stated that that they are intending to submits and presents similar evidence in their intended land case. Hence since the attached list and minutes bears the names and signatures of the individuals who have consented to allow the applicants herein to file the suit against the respondents on behalf of them, I am my view the same proves that the applicants have obtained consent for the remaining individuals (318) to institute proceedings against the respondent on their behalf. For ease reference, I hereby quote a part of an extract minutes as attached on the applicants’ affidavit; ”.KUTEUA WAWAKILISHI KATIKA KESI Agenda iliposomwa na Katibu na kufafanuliwa na wajumbe wenye uelewa wa sharia na kusema kuwa, kunapokuwa na wadai wengi kwenye dai linalofanana ni takwa la kisheria kuwa na wawakilishi watakaosimamia madai hayo ili kuepusha wingi na msongamano wa walalamikaji wanaokwenda kuhudhuria kesi hiyo. Wajumbe walijadili kwa kina nakufikia maamuzi ya kuwateua wawakilishi kumi(10) kuwa 6 wawakilishi wa wenzao. Walioteuliwa ni hawa wafuatao-:
1. ISA RAJABU MGALA
 2. KIMANGANO LEONARD MDEE
 3. ATHUMANI JAKOB MWANGA
 4. SAIDI RASHIDI NDOILE
 5. ABJADI LAWENA MKWIZU
 6. PAUL EDUADI MAGWERO
 7. RAMADHANI HOSENI JUMA
 8. ADAMU RAMADHANI MAHANYU
 9. BITRESI PHILIP MISOFE

10. MACHAKU ALI MDEE” From the above extract, the applicants herein have been authorized by the listed individuals to file the representative suit on their behalf, as per the above cited extract minutes. From the foregoing, I hereby grant the application. The applicants are granted leave to file a representative suit on behalf of 318 others; the same shall be filed within thirty (30) days from the date of this ruling. In the circumstances no order as to the costs. It is so ordered. DATED at MOSHI this 07th day of August, 2024. X JUDGE Signed by: A. P. KILIMI 7 JUDGE Court; Ruling delivered this 07th day of August, 2024 in the presence of Ms. Glorian Issangya and Ms. Dommy Rimoy both learned state Attorney for the respondent and Ms. Francisca Lenguju learned advocate for all applicants, also all applicants present. Sgd; A. P. KILIMI JUDGE 07/08/2024 8

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CASE PAGE <https://chat.esheria.ai/case-law/tanzania/issa-rajabu-mgala-v-tanzania-airport-authority-Representativesuits-tanzlil-2024--6a3ea52d3b1caa9129826a47>

Prepared on 14 October 2026 · Esheria