

TANZANIA / JUDGMENT

masanja safii

COURT
TANZLII

DECIDED
20 December 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(LAND DIVISION) AT DAR ES SALAAM) MISC. LAND APPLICATION NO. 000001481 OF 2025 CASE
REFERENCE NO. 202501211000001481 MASANJA DABA
JIBOMOLA..... 1st APPLICANT MABULA ROBART
MANONI.....2nd APPLICANT TANO NJILE
NDONGO..... 3rd APPLICANT IKWARIRO BUJUKU
MASANJA..... 4THAPPLICANT MAKOYE BUYANDA
GONG'HOMA.....5th APPLICANT VERSUS JENGA TANZANIA
AGRICULTURE LIMITED..... RESPONDENT

RULING

24/02/2025 &28/03/2025 GWAE, J This ruling emanates from the application for representative suit brought under Order 1 Rule 8 (1) and Section 95 of the Civil Procedure Code, Cap 33, R. E, 2019 (CPC) together with any other enabling provision of the law. i Essentially, the applicants herein are praying for the following orders;

1. That, this Court may be pleased to grant leave to Masanja Daba Jibomola, Mabula Robart Manoni, Tano Njile Ndongo, Ikwalilo Bujiku Masanja and Makoye Buyanda Gong'homa who were appointed in the minutes of the meeting conducted on 20th December 2024 by villagers to file a representative suit on behalf of Three hundred and three (303) other villagers against the respondent.
2. Any other order (s) or/and relief (s) as this Court may deem fit to grant. This application is supported by the sworn affidavit of the applicants and also a minute of other 303 villagers alleging their pieces of land located at Ng'enga, Magolofani, Njianne and Mtopetope Street at Ngulakula village/ hamlet (Kitongoji) area within Kibiti District in Pwani Region to have been encroached by the respondent herein. Thus, they all have common interest qualifying them to institute their intended representative suit against the respondent since their efforts to amicably settle the dispute out of the court went in vain. The application is resisted by the respondent via her counter affidavit sworn by one Mwemezi Basil Deusdedit strongly denying to have trespassed 2 the land allegedly occupied by the applicants and 303 others. He further contended that, the applicants have not even bothered to describe their purported land, its location, demarcation or even its size allegedly trespassed. According to

the deponent, the applicants' omission, leaves a lot to be desired regarding their allegations and even the validity of the current application. On 24th February 2025, when the application was called on for hearing Mr. Kasaizi Endrew kasaizi and Mr. Ashiru Lugwisa, both learned advocates appeared for the applicants and respondent respectively. In support of the application, Mr. Kasaizi, primarily sought an adoption of the contents of both the affidavit and reply to the respondent's counter affidavit. He then urged this Court to adhere to the case law in Issa Rajabu and 9 others vs. Tanzania Airport Authority and 4 others, Misc. Civil Application No. 13361 of 2024 at TANZLII as (Misc. Civil Application No. 13361 of 2024

[2024] 77HC 7098 (7 August 2024). On the other hand, Mr. Ashiru argued that the applicants have not met conditions set under Order 1 Rule 8 (1) of the CPC as they have not explained 3 as to how they have common interest taking into account that they have failed to describe the land in dispute. Mr. Kasaizi rejoined the respondent's reply submission by briefly stating that, the applicants' have sufficiently met the requirement set by the law as opposed to the respondent's stance. Now to the Court's determination of the application. Before embarking into the merit or otherwise of the application, I find pertinent to have the provision of the law cited by the applicants in moving the Court that is Order 1 Rule 8 (1) of the CPC reproduced herein under:- "8 f) 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; 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. 4 According to the above provision of the law, it sounds to me that, a group of persons having the same or common interests in a subject matter be it land or any other subject matter, may be represented in a suit termed "a representative suit" by one or more than one interested person, but upon leave being sought and granted by the Court. The rationale of application for leave for a representative suit is among others; to avoid inclusion of non-existing or fabricated plaintiffs who may lead to undesirable consequences in a representative suit whose essence is basically at minimization of wastage of time and costs of the case since it serves as a vital tool for collective legal action. This legal position was stressed by the Court of Appeal of Tanzania when interpreting Order 1 Rule 8 (1) of the Code in K. J. Motors and 3 Others vs. Richard Kishamba and Others, Civil Application No. 74 of 1999 (unreported) sitting at Dar es Salaam, Cited by my brother, Kilimi, J in Issa Rajabu and 9 others vs. Tanzania Airport Authority and 4 others (supra) where it had these to say:- " 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 5 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." Also in *Lujuna Shubi Balonzi Senior vs. the Registered Trustees of Chama cha Mapinduzi* [1996] TLR 203 where this Court (Samatta, J as he then was held that:- "The foundation of Order I Rule 8 of CPC is to be found in a principle which transcends the personal or parochial natural of the combatants who are arrayed as parties to the suit it affects the rights of other persons not present before the court. Hence the duty is set on the court itself to follow meticulously the procedure prescribed by Order I Rule 8 in view that that of the far-reaching consequences of a decree passed in what is described in law as a representative suit it is necessary that the relevant must be treated as presentory and mandatory." (See also case law in *Wanjiru vs. Standard Chartered Bank Kenya Ltd and others* [2003] 2 EA 701 *Cahill and others vs. Nandhra 6 and others* [2006] 1 EA 35) and *Abdallah Mohamed Msaka and 2 others vs. City Commission of Dar es salaam and two others* (1998) TLR 439). In our present application, the applicants are plainly found to have demonstrated that, 308 persons/villagers who are neighbours have common interests in their pieces of land. Similarly, they have attached the minute of the meeting conducted on 20th December 2024 bearing the name of each villager interested in pursuing the intended representative suit. Further to that, each villager thereof has signed the minute, which is suggestive that every person named therein has consented to this application, if granted, to be followed by a representative suit in the name of the present applicants as glaringly revealed by Para. 6, 7, 9 and 11 which, for purpose of clarity are reproduced herein below:-

6. That the respondent has trespassed to all 308 Villagers' plots of land hence having the same interest on the suit.
7. That the applicants and 303 other villagers are neighbors from NG'ENGA, MAGOLOFANI, NJIANNE and MTOPE TOPE street at NGULAKULA village (KITONGOJI) at Kibiti District Coast Region. 7
9. That we are a total 308 people with the same claims against the respondent. The evidence we intend to present is also similar.
11. That due to large number of the plaintiffs who intends to file a suit, it was resolved in our meeting held on 20th day of December, 2024 and we the applicants were successful been appointed at the meeting to represent the other 303 individuals who intend to file a land suit in the said intended land case". I am of further of the view that, the respondent's assertion that, the applicants have not met the criteria provided by the law to enable the Court to grant leave to wit; they have not described better and further particulars of the land in dispute between the parties, is not attainable. In our instant application, the applicants have properly exhibited their interests and that of 303 other persons in the intended representative suit and their written consent to be represented by the applicants herein. The issue whether, the suit land is properly described as required by the law, in my view, is more deliberative in a suit rather than in the application where the location/area has been identified. Consequently, this application for leave to file a representative suit is granted.

The applicants namely; Masanja Daba Jibomola, Mabula Robart Manoni, Tano Njile Ndongo, Ikwililo Bujiku Masanja and Makoye Buyanda 8 Gong'homa are granted leave to institute a representative suit on their own and on the behalf of 303 other persons against the respondent within fourteen (14) days from the date of this order. Costs of the application shall abide the result of the intended representative suit. It is so ordered DATED at DAR ES SALAAM LAND DIVISION this 28th March, 2025 R. GWAE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/343471/source_file/d967c778cc2b2ccd/masanja_safii.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/masanja-daba-jibomola-v-jenga-tanzania-agriculture-limited-Representativesuits-tanzlii-2024--6a3ea5243b1caa912981a401

Prepared on 14 October 2026 · Esheria