

UGANDA / JUDGMENT

**Andama & 3 Ors v Anguyo & 2 Ors
(MISCELLANEOUS CAUSE No. 0018 OF
2017) [2017] UGHCCD 43 (27 April 2017)
[2017] UGHCCD 43**

COURT

HC: Civil Division (Uganda)

BEFORE

Stephen Mubiru, J

CASE / FILE NUMBER

MISCELLANEOUS CAUSE No. 0018 OF 2017

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ARUA

MISCELLANEOUS CAUSE No. 0018 OF 2017

1. ANDAMA RICHARD }
2. CILIANO AGORO }
3. ATATA EDWARD } APPLICANTS
4. TISIKA JOHN }

VERSUS

1. ANGUYO TOM }
2. NADULE WANDI TOBACCO AND WOOD FUEL }
- GROWERS AND COOPERATIVE SOCIETY LTD } RESPONDENTS
1. WESTNILE COOPERATIVES UNION LIMITED }

Before: Hon Justice Stephen Mubiru

RULING

This is an ex-parte application made under the provisions of section 98 of *The Civil Procedure Act* and Order 1 rule 8 (1) and 22 of *The Civil Procedure Rules*. It seeks leave to be granted to the applicants to sue in a representative capacity, in their name for and on behalf of farmers or members of Nadule Wandu Tobacco Wood Fuel Growers Cooperatives Society Limited and West Nile Cooperatives Union Limited, in a suit intended to cause the intended defendants to account

to members and to hold elections for renewal of their leadership. The application is supported by the affidavit of the first applicant in which he states that intended defendants are cooperative societies duly registered as required by law. They last conducted elections for their respective Management Committees during the year 2004 and have since then failed to hold election of new office bearers causing mismanagement and failure to account to members. Attached to the affidavit are minutes of the members' meeting at which the applicants were selected as representatives of the rest in making this application, which also has an attendance list with names and signatures of 193 members.

Under Order 1 rule 8 (1) of *The Civil Procedure Rules*, 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 on behalf of or for the benefit of all persons so interested. What is required under this rule is that the parties must have the same interest. The procedure comprises two steps which must be fully complied with. The first is to obtain permission from court to bring a representative suit and the second is the requirement to giving of notice of institution of the suit by the court to all such persons, on whose behalf the suit is brought, either by personal service or by public advertisement where the numerous number of persons involved does not permit personal service. It is the court which is mandated to give the notice and it directs how it should be done in each case.

I have perused the application which discloses that there are there numerous persons intending to be plaintiffs, whose full list is attached to the application, who have the same interest in the intended suit. This therefore is a proper case for the grant of the representative order applied for, which therefore is hereby granted.

The second requirement deals with service of notice on all the persons intended to be party to the suit. The essence of the notice is to inform all persons on whose behalf or for whose benefit the suit is intended to be instituted, to be impleaded in the suit as a way of facilitation of an expeditious, proportionate and affordable resolution of the question in which this large body of persons share a community of interest without resorting to individual suits which would not only clog the issue in controversy by also breed unnecessary multiplicity of suits (See *Purma Chandra Panigrahi v. Baidya Jani (1972) 74 Cut LT 309*). This requirement serves to; safeguard the rights of all the persons suing; and to sanctify the process of the court. *Mulla on Code of Civil Procedure* is quite handy in addressing this aspect, that:

The courts, where called upon to deal with an application under Order 1 rule 8, should bear in mind that the provisions contained therein are mandatory and not merely directory, and are essential preconditions for trial of the case as a representative suit. They must see that if they direct that the notice should be by public advertisement, the notice must disclose the nature of the suit as well as the reliefs claimed therein, in order to enable the persons interested to get themselves impleaded as parties to the suit, either to support the case or to defend against it. Further, the notice must mention the names of the persons who have been permitted to represent them, so that the persons interested may have an opportunity of knowing who has been selected to represent them.

A similar position was taken in **Ibrahim Buwembo, Emmanuel Sserunjogi, Zubairi Muwanika for and on behalf of 800 others v. UTOA Ltd., HCCS No. 664 OF 2003**, it was held that wording of Order 1 rule 8 (1) with regard to notice either by personal service or by public advertisement as the court may in each case direct is mandatory. The notice by public advertisement must disclose the nature of the suit as well as the reliefs claimed so that the interested parties can go on record in the suit to support the claim.

Since the rule ordains in mandatory terms that notice of the suit must be given to all persons on whose behalf or for whose benefit a suit is intended to be instituted, and that such notice shall be given 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, notice in the instant application is to be given by personal service because of the relatively small number of persons on whose behalf or for whose benefit the suit is intended to be instituted. Each of the persons whose names are on the list attached to the application, ought to be served, as required by Order 1 rule 8 (1) of **The Civil Procedure Rules**. The content of the notice, must comply with the following;

1. It must clearly disclose the nature of the suit as well as the reliefs intended to be claimed therein as far as possible drawing upon the pleadings and leaving no room for adornment or explanations.
2. It must mention the names of the persons who intend to file the representative suit together with the particulars of the advocate representing them.
3. It must contain information that the persons interested may apply to be made a party in the suit and should prescribe time within which the persons interested should so apply.
4. It must declare that it has been issued pursuant to the order of this court citing the date of issuance.

The application is therefore allowed in the above mentioned terms with no order as to costs.

Delivered at Arua this 27th day of April 2017.

Stephen Mubiru

Judge

27th April 2017.

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Prepared on 13 October 2026 · Esheria