

**Oriokot and 3 Others v National Forestry
Authority and 2 Others (Miscellaneous Cause
8 of 2023) [2024] UGHC 591 (26 June 2024)**
[2024] UGHC 591

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The applicants' respective supporting affidavits deponed the grounds anchoring 25 the application that the applicants, all those persons listed, and many others are of different clans of Itekok-Ikirok clan, Ikarigwok-Imunyira clan, and Iposonga clan

and have the same customary interest in the land measuring approximately 350

acres located at Ongoromo village, Ogwolo parish, Ogwolo Sub County Kalaki district (the suit land), over which they intend to sue the respondents.

That the applicants and all the listed persons are stated to have inherited the suit land from their great-grandparents, grandparents, and parents.

That the applicants have grass-thatched houses and permanent structures on the $\$ \backslash \mathrm{mathsf{S}} \$$ suit land, which the respondents demolished and forcefully started planting trees on since 2009, claiming that the suit land was a forest reserve.

That the respondents are rearing goats and constructing semi-permanent structures on the suit land, but they have also dragged some applicants and their

relatives to the police on allegations of criminal trespass since 2008, let alone 10 issuing threatening letters (copy marked as "A").

That the applicants, who were selected as representatives of the other affected persons from a meeting of three clans convened, for which they have annexed a copy of the minutes, intend to sue the respondents seeking recovery of land

trespassed on by the respondents, declaratory orders, an order restraining the 15 respondents from further trespassing on the applicants' land, an order vacant possession of the suit land by the respondents, a permanent injunction, general damages for the inconvenience caused and costs of the suit.

3. Representation:

- Counsel Erabu Timothy represented the applicants, and he filed written 20 submissions on the applicants' behalf, which have been considered accordingly.

- 4. Issue:

One issue suffices in resolving this instant application and that is;

Whether the applicants can be granted leave to file a representative suit? 25

5. Resolution of the Application:

It is trite law that the duty and burden of proof lie on the applicants because they are the ones who seek to get a decision from this court in their favour. (See: Sections 101 and 102 of the Evidence Act. Cap 6).

- The applicants herein seek for orders that a representative order do issue giving \$ \mathsf{S} \$ them permission to sue the respondents on their own and on behalf of the others listed and many others and for the costs of the application to be provided for. As regards the representation of others in a civil suit, this is provided for in Order 1 Rule 8 of the Civil Procedure Rules (CPR) it stipulates thus;
- (1) Where there are numerous persons having the same interest in one suit, one 10 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 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, 15 as the court in each case may direct.
- (2) Any persons on whose behalf or for whose benefit a suit is instituted or defended under subrule (1) of this rule may apply to the court to be made a party to that suit.

Order 1, rule 8(1) of the CPR, prescribe that a person(s) with a common interest 20 with others can bring one suit for one's and others' benefit but with the leave of the court, among other considerations.

Consequently, a representative order must be obtained (see: Sonko vs Haluna [1971] E. A 443).

For a representative order to be obtained issued by court, the applicant(s) and 25 the listed persons ought to have a common interest and not separate interests (see: *Daudi Abdulla vs Ahmed Suleman (1946) 13 E. A. C. A 1.*)

In the persuasive English case of Duke of Bedford v Ellis and others [1900-03], All ER Rep 694, it was pointed out that;

"... persons may sue in a representative capacity under this rule if they and the class they represent have a common interest, e.g., the assertion of a right alleged to have been created in the class by statute, and a common grievance, e.g., that that right has been violated, and all seek the same remedy which is beneficial to them all. It is not necessary that the class represented should assert some beneficial proprietary right in the subjectmatter of the claim."

As regard this application, in the affidavits in support of the application, the applicants aver to belong to the Itekok-Ikirok clan, Ikarigwok-Imunyira clan, and

15 Iposonga clan.

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They also all assert that they have the same customary interest in the land measuring approximately 350 acres located at Ongoromo village, Ogowolo parish, Ogowolo Sub County Kalaki district (the suit land) which they stress to have inherited from their great-grandparents, grandparents and parents.

The 1st and 3rd applicants aver that they are from the *Ikarigwok-Imunyira* clan, 2nd applicant is from the *Iposonga* clan, and the 4th applicant is from the *Itekok-Ikirok* clan.

The applicants contend that they and the listed persons attended a meeting on 20th August 2023 in which they were authorised to sue on their own and on behalf

of others the respondents who they contend have put structures on the suit land, 25 trespassed on it by planting trees and were practising goat rearing thereon while asserting that the suit land was a forest reserve.

The applicants insist that they had common interest in the suit land through their various clan inheritance but that the respondent had caused the applicants to be summoned to the police as trespassers as evidenced by annexure "C" which I have examined.

I have also perused annexure "D", whose import is the communication by the 2nd \$ \mathsf{S} \$ respondent to the 3rd applicant claiming authority from the 1st respondent of the suit land.

In the case of **Radcliffe and Others v Coltsfoot Investments Ltd [1987] LRC (Comm) 127**, in which an appeal against a representative suit was allowed, it was observed that;

" (a) the words "the same interest" in Order 9, rule 9 involved the same grievance, i.e., cause of action, and the same claim, i.e., the same remedy, and not just a common point of law or fact,

(b) a representative action was inappropriate where, in order to remedy their grievances and to obtain relief, members of the class represented were obliged to bring a subsequent action in which they were bound to prove liability as well as damage (see p. 137 post);

(c) though in general where the principal relief sought is a declaration it is not fatal to a representative action that the unnamed plaintiffs associate with it a personal claim for damages, the authorities suggested that a claim for damages, as opposed to other relief, was inappropriate for a *representative action: in the present case the declaratory relief added to the* amended [1987] LRC (Comm) 127 at 128 statement of case was a mere device designed to convert the original action into a representative action (see pp. 138 and 142 post);

(d) the representative action would not produce finality in the litigation (see p. 143 post).

Whereas I do agree, according to the pleadings and the attached evidence of summons to the police that the applicants share the grievance that they had allegedly trespass on the suit land, the question of common interest in the suit

land as customary owners is apparent and thus would require further S interrogation as to such nature by each of the applicant. Thus, in my considered opinion, customary ownership of the suit land is a

common point of fact connecting the applicants, though their interests may differ. This common interest is thus in line with Order 1 Rule 8 of the Civil Procedure Rules which provides that a group seeking representative action must $\$10$ be definitive and that such persons must bear the same interest, which I do find cogent in respect of the parties herein.

The applicants have thus proved that they have a common interest in the suit land though they may have different rights to it, which rights may not directly

conflict but coexist without interfering with each other. 15 As a result of the above, I would find that the bringing this application where the applicants, while belonging to different clans, meaning they have different customary rights, they have a common interest in the suit land which may not directly conflict and interfere with each other and those are subject to further 20 scrutiny.

> Accordingly, I am satisfied that the applicants have established by affidavit evidence that they have the same customary interest as they and the class they represent have a common interest, e.g., the assertion of their alleged right to the suit land created in the class by law which recognises customary interest in land

and they share a common grievance, that is that their rights as customary 25 owners to the suit land have been violated and all of them seek the same remedy

which is beneficial to them all and as such this application is allowed with the following orders issued,

- a) The applicants are granted leave to file a representative suit in accordance with the provisions of Order 1 Rule 8 of the Civil Procedure Rules (CPR) which stipulates thus;
 - (1) 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 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.
 - (2) Any persons on whose behalf or for whose benefit a suit is instituted or defended under sub rule (1) of this rule may apply to the court to be made a party to that suit.

b) This being an ex parte matter, I make no order as to the costs of this application.

I so order.

Hon. Justice Dr Henry Peter Adonyo

Judge

26th June 2024

\$5\$

\$7\$

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