

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(KIGOMA SUB-REGISTRY)**

**AT KIGOMA**

**MISCELLANEOUS LAND APPLICATION NO. 26796/ OF 2023**

**PETRO KAZOYA ..... 1<sup>st</sup> APPLICANT**  
**NDONGO MBEHO ..... 2<sup>nd</sup> APPLICANT**  
**MGEMA MLYASHUMA ..... 3<sup>rd</sup> APPLICANT**

**VERSUS**

**KASULU DISTRICT COUNCIL ..... 1<sup>st</sup> RESPONDENT**  
**KASULU DISTRICT COMMISSIONER ..... 2<sup>nd</sup> RESPONDENT**  
**THE ATTORNEY GENERAL ..... 3<sup>rd</sup> RESPONDENT**

**RULING**

16/04/ & 07/05/2024

**NKWABI, J.:**

This application has been brought under a certificate of urgency. Under the provisions of Order 1 Rule 8 of the Civil Procedure Code, the applicants are imploring this Court to make the orders I list underneath:

1. That, this honourable Court be pleased to give leave to the applicants so that they can represent other 97 residents of NYATUKU MAGOROFANI of NYANZAZA hamlet – KAGERANKANDA village in Kasulu District in Kigoma region who intend to file a suit against the respondents.
2. Costs be provided.
3. Any other relief deemed fit.

It is avowed in the affidavit of Mr. Rumenyela that the applicants and other 97 residents occupy a piece of land which the 1<sup>st</sup> and 2<sup>nd</sup>

respondents are evicting them by force. It appears that there is a notice to vacate in the area issued by the Executive Director, Kasulu District Council.

In this Court, the Respondents, vide, the learned State Attorney, lodged a notice of preliminary objection to the effect that:

*“The application is unmaintainable in law for want of applicants’ authorization to act on behalf of the other prospective plaintiffs contrary to Order I rule 8 (1) & 12(1) and (2) of the Civil Procedure Code [Cap. 33. R. E. 2019].”*

When the preliminary objection was before me for hearing, the applicants were represented by Mr. Daniel Edward Rumenyela, learned counsel, and the applicants were present in person. The respondents were duly represented by Messrs. Selestine Ngailo and Nixon Tenges, learned State Attorneys.

In submission in chief, Mr. Ngailo was brief. He maintained that the applicants did not have the permission to file a representative suit under Order I rule 8 (1) and Rule 12(1) & (2) of the Civil Procedure Code. He explained that, the applicants ought to have got permission from the persons who are to be represented. The permission should have been in writing and it should be filed in Court, stressed Mr. Ngailo.

It was added by Mr. Ngailo that, this application was not accompanied with the permission of the persons who are to be represented, as such, they do not know if the three applicants have been permitted by the 97 others. He is thus, of an opinion that the application is incompetent. Mr. Ngailo referred me to the decision of this Court in **Juma Maganga Lukobola & 7 Others v. Tanzania Medicine and Medical Devices Authority (TMDA) & 3 Others**, Misc. Civil Application No. 642/2020. He also asserted that in this application, the applicants have just listed the names of other persons whom they are representing. He finally prayed that this application be struck out with costs.

Mr. Rumenyela readily resist the stand point of the learned State Attorney. He contended that the law does not require any document for authorization. He also pointed out that the case laws cited by his learned friend are not binding to me. Mr. Rumenyela also stated that the case of **Juma Mganga Lukobola** (supra) cites another case which says a list of names signed by the applicants is sufficient at page 47. He was also of the opinion that Rule 12(1) concerns a plaint and not an application.

The list we brought, argued Mr. Rumenyela, has names and signatures of the persons to be represented. In concluding his submission, Mr. Rumenyela beseeched this Court that preliminary objection be overruled and the matter be heard on merit.



Mr. Ngailo maintained their stance that the requirement of the law has not been met. He insisted on the provisions of the law as they had earlier on stated above. He readily conceded that I am not bound by the decision of this very Court, but explained that there should be brotherhood and uniformity. He entreated me that this Court follows the decisions he referred this Court to. He pointed out that the counsel is relying on the submissions of parties at page 47 but the Court decided at page 51 in the case of **Lukobola** (supra). Even the list of names attached to the affidavit has no relevance to the application, protested Mr. Ngailo. He further explained that the title of the list is irrelevant to this application. He reiterated his invitation to me that the preliminary objection be sustained.


I have given due consideration to the arguments advanced by the counsel of both parties. I have also perused the pleadings in this application. I promptly decide in favour of the preliminary objection. This Court has consistently, time without number, ruled that where there is no written authorization to the applicants or plaintiffs by other persons sought to be represented in a representative suit, that application or suit has to fail at the preliminary stage like this. The rationales are not hard to get, one being recovery of costs, if the respondents win, second, service of the notice of the institution of the suit, lest it be objected and third, the rule as to res-judicata.

I accept the view of Mr. Ngailo that the list attached to the affidavit of Mr. Rumenyela is incompressible thus incapable of assuring this Court that indeed, those other persons have in fact asked or permitted the applicants to seek leave to file a representative suit. The danger of availing the leave sought without such ascertainment might make the applicants hide behind the leave of the Court when a controversy arises and say, *"Look, we have this leave to file a representative suit issued by the Court, we cannot be questioned"*. Further, there would be no ground for this Court to grant the application sought without the ascertainment that those other persons truly, asked or permitted the applicants to file a representative suit. In the premises, I do not see the reason to depart from the stance of this Court in **Lukobora's** case (supra). Thus, I reject the stand view maintained by Mr. Rumenyela, in this application.

Consequently, I rule that this application is unmaintainable in this Court. I strike out the application with costs. It is so ordered.

**DATED** at **KIGOMA** this 7<sup>th</sup> day of May, 2024.



  
J. F. NKWABI  
**JUDGE**