

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA DISTRICT REGISTRY)  
AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 54 OF 2022**

**JONATHAN LUTHER KIULA .....1<sup>ST</sup> APPLICANT  
LEONARD RICHARD MMBAGA .....2<sup>ND</sup> APPLICANT  
HERMAN JOSEPH KASSENGA .....3<sup>RD</sup> APPLICANT  
ELIJA NGOYANI RUMBE .....4<sup>TH</sup> APPLICANT**

**VERSUS**

**MINISTRY OF MINERALS.....1<sup>ST</sup> RESPONDENT  
ATTORNEY GENERAL.....NECESSARY PARTY**

**RULING**

**23/05/2022 &27/5/2022**

**GWAE, J**

The 1<sup>st</sup> respondent is alleged to intend or is about to offer Mine Site (ML-490/2013) Block "C" Simanjiro Mererani to a new investor before satisfaction of an award procured by the Commission for Arbitration and Mediation of Arusha at Arusha (CMA) in favour of the applicants and 536 others and against their employer one TanzaniteOne Mining Limited/Sky Group.

Following the applicants' allegations against the 1<sup>st</sup> respondent, the applicants have filed this application under Order 1 Rule 8 (1) and section 95 of the Penal Code, Cap 33 Revised Edition, 2019 (The Code) praying for a representative order allowing the applicants to file a suit on their own and on the behalf of 536 persons (decree holders) whose names are appended to an affidavit.

This application is supported by sworn affidavit of Mr. Frank Wilbert Makishe, the learned counsel for the applicants however it is not contested since the respondents have not filed their counter affidavit nor did they enter appearance when this application was called on for hearing the 23<sup>rd</sup> day of May 2022 despite the fact that they were accordingly served through Mwananchi Newspapers.

At the hearing, the applicants' counsel had nothing to verbally add except his reliance of his sworn affidavit whose essence is, that the 1<sup>st</sup> respondent's acts of promising the decree holders to satisfy the award before tendering Mining Site in Block "C" Mirerani area within Simanjiro in Manyara region to a new investor are prejudicial to the applicants and their colleagues.

Having carefully considered the applicants' affidavit and documents appended thereto, it is evident that the applicants and 536 persons are holders of the award which was procured on the 14<sup>th</sup> August 2020 by the CMA. It is further revealed that; the applicants and other persons had attempted to have their award fully satisfied by filing an application for execution in this court vide Execution No. 31 of 2021 but the same was withdrawn on the 16<sup>th</sup> August 2021 with leave to re-file however their decree has not been satisfied to date.

I have further noted that, the said site is about to be either disposed of by a way of tender or not in operation. Further to that, there is a list of the decree holders whose signatures are appearing in the minute sheet of the meeting held on the 23<sup>rd</sup> day of March 2022 which appointed the applicants to be representatives of other decree holders. Hence, other decree holders must be interested in the intended enforcement of the award. In the case of **Abdallah Mohamed Msaka and 2 others vs. City Commission of Dar es salaam and two** others (1998) TLR 439, this court inter alia stated;

“Provisions of order 1 Rule 8 of the Civil Procedure Code, 1966 require an application for leave to file a representative suit to establish that numerous persons

are similarly interested in the suit and they are willing to join it. These provisions do not admit where applicant merely intends to invite others who may have interest in the case”.

(See also **Wanjiru vs. Standard Chartered Bank Kenya Ltd and others** [2003] 2 EA 701 and **Cahill and others vs. Nandhra and others** [2006] 1 EA 35).

In our instant application, the applicants have properly exhibited their interest and the interests of other persons in the intended suit and their willing or readiness to be represented by the applicants. In the absence of the contrary, I do not see any reason as to why this application should not be granted.

Consequently, this application for leave to file a representative suit is granted. The applicants namely; **Jonathan Luther Kiula Leonard Richard Mmbaga, Herman Joseph Kassenga and Elija Ngoyani Rumbe** are permitted to institute a representative suit on their own and on behalf of 536 other persons on against the respondents within fourteen (14) days from the date of this order. Costs of the application shall abide the result of the main case.

It is so ordered

DATED at ARUSHA this 27<sup>th</sup> MAY, 2022



**SGD: M. R. GWAE**

**JUDGE**

**27/05/2022**

