

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 460 OF 2023

YUSUF BAKARI NYAHORI.....1<sup>ST</sup> APPLICANT

MARY JAMES MKONDYA.....2<sup>ND</sup> APPLICANT

VERSUS

UBUNGO TOWN COUNCIL.....1<sup>ST</sup> RESPONDENT

THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT

KISSAH M. MBILLA.....3<sup>RD</sup> RESPONDENT

GEOFFREY MBWANA.....4<sup>TH</sup> RESPONDENT

**R U L I N G**

*Date of last Order:5/09/2023*

*Date of Ruling: 14/11/2023*

**K. D. MHINA, J.**

By a chamber summons taken under Order 1 Rule 8 (1) and section 95 of the Civil Procedure Code [ Cap. 33 R. E. 2019] ("**the CPC**"), the applicants, on behalf of 78 others, instituted this application against the respondents.

The applicants, *inter-alia*, are seeking the following orders: -

- i. That this Court be pleased to issue an order permitting the applicants to sue on behalf of the persons whose names are listed in the annexure SM-A annexed in the affidavit supporting the application.*
- ii. Cost of this application be provided for.*

The application is supported by the separate affidavits of Yusuf Bakari Nyahori and Mary James Mkondya, the applicants, which expounded the grounds of the application.

After being served with the chamber summons and its supporting separated affidavit, the 1<sup>st</sup> and second respondents confronted the same with a notice of a preliminary objection that canvassed only one ground, namely;

- i. The application is incompetent for contravening order XLII rule 2 of the CPC for not being supported by affidavits of other alleged applicants.*

The objection was argued by way of written submissions duly drawn and filed by Kause K. Izina, learned State Attorney for the respondents, and Ms. Amina Nyahori, learned advocate for the applicants.

In support of P.O., Ms. Izina briefly submitted that the instant application is supported by the affidavits of Yusuf Bakari Nyahori and Mary

James Mkondya, but the affidavits do not state whether the deponents were duly authorized to swear also on behalf of all other 78 persons who were claimed to be parties to the application.

She narrated that by nature of the instant application, those persons were required to either swear their affidavit or, if they had appointed the applicants to be their representative, the applicants were supposed to state clearly that they were duly authorized to swear affidavits on behalf of those others.

She further submitted that the applicant's failure to state whether they were authorized to act on behalf of others renders the application incompetent. She substantiated her submission by citing the decision of the Court of Appeal in **Mohamed Abdillah Nur and three others vs. Hamad Masauni and two others**, Civil Application No. 436/16 of 2022 (Tanzlii)

Briefly, in response, Ms. Nyahori submitted that in the instant application, the applicants seek leave to sue on behalf of their 78 colleagues whose names were in the annexure.

She further stated that authorization to sue on their behalf does not need each person to state in a separate affidavit to prove the same. To cement her position, she cited the decision of the Court of Appeal of **Bruno**

**Wncenslaus Nyalifa vs. The Permanent Secretary, Ministry of Home Affairs and another**, Civil Appeal No. 82 of 2017.

Regarding the cited case of **Mohamed Abdillah Nur (Supra)**, she submitted that it is distinguishable because in the instant application, the applicants are two, and there are affidavits.

She concluded by stating that the applications for representative suits only depend on the authorization of the representees to authorize the applicants through the minutes. On this, she referred to this Court's decision in **Kihila William and five others vs. National Ranching Company Ltd and two others**, Misc. Land Application No. 11 of 2022 (HC-Bukoba).

The 1st and 2<sup>nd</sup> respondents did not file the rejoinder.

Having gone through the chamber summons, affidavits and submissions from both parties, the issue is whether the application is contrary to XLII rule 2 of the CPC for not being supported by affidavits of other alleged applicants.

Straight away, I will start the determination of the preliminary objection by citing the relevant provision of law. The law provides that;

*"2. Every application to the Court made under this Code shall, unless otherwise provided, be made by a chamber summons supported by affidavit:*

*Provided that, the Court may where it considers fit to do so, entertain an application made orally or, where all the parties to a suit consent to the order applied for being made, by a memorandum in writing signed by all the parties or their advocates, or in such other mode as may be appropriate having regard to all the circumstances under which the application is made".*

The provision above is instructive that every application must be accompanied by an affidavit. Therefore, the question is whether in the instant application there are affidavits of the application.

The applicants in the application are Yusuf Bakari Nyahori and Mary James Mkondya. Both applicants attached a separate affidavit in the application to support the same.

Therefore, as far as the applicants' affidavits in this application, there is no doubt that their separate affidavits accompanied the application; hence, the provision of law was complied with.

Another issue raised by Ms. Izina was her views in her submission that the application was supposed to be accompanied by the affidavits of the 78 representees to prove that they authorized the applicants to represent them.

On this, as I rightly submitted by Ms. Nyahori in applications of this nature, the affidavits of the representees are not a requirement. The representees only need to give their authorization.

Having gone through the applicants' affidavit, I found that in paragraph 2, Yusuf Bakari Nyahori stated that he was appointed to represent 78 persons whose names were listed in annexure SA-1. In the affidavit of Mary James Mkondya, in paragraph 2, also she stated the same.

Therefore, the applicants indicated that they were appointed to represent others and annexed the meeting minutes which appointed them.


From the discussion above, that is sufficient, and the law does not require those other persons to swear affidavit. That authorization in annexure SA-1 is the consent of the persons sought to be represented. On this, I subscribe to the decision of this Court in the cited case of **Kihila William (Supra)** that applications for representative suits only depend on

the authorization of the representees to authorize the applicants through the minutes.

Flowing from above, I hold that the P.O. raised by the 1<sup>st</sup> and 2<sup>nd</sup> respondents is devoid of merits. Consequently, I dismiss the P.O. raised and order the application to be heard on merits. I order no costs.

It is so ordered.



  
**K. D. MHINA**  
**JUDGE**  
**14/11/2023**