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IN THE HIGH COURT OF TANZANIA
(D.R ES SALAM DISTRICT REGISTRY)

AT D.R ES SALAM

MISC. CIVIL APPLICATION NO. 78 OF 1999

MANGENYULE IRUMBIRA } APPLICANT
SELEMANI NASSORO AND 54 OTHERS)

versus

THE CHAIRMAN, D.R ES SALAM
CITY COMMISSION RESPONDENT

R U L I N G.

MANANTO, J:-

Manyenyule Irumbira and Selemani Nassoro have filed a chamber summons under Order 1 rule 8 and 12 and section 95 of the Civil Procedure Code, 1966 whereby their counsel could be heard upon the application for the following orders:

1. That this court may be pleased to permit two of the several Applicants/Plaintiffs (named above) to sue, appear, plead or act for and on behalf of the other 54 several applicants/plaintiffs whose names appear in the list appended to the affidavit supporting this application.
2. Costs be provided for
3. Any other order(s) as this Honourable Court may deem fit.
4. This application has been taken out on the grounds and reasons set forth in the affidavit of Mangenyule Irumbira and Selemani Nassoro annexed hereto and on further grounds and reasons to be adduced at the hearing.

On being served with both the plaint and the chamber summons, the respondents, without filing a written statement of defence, filed a notice of preliminary objection on points of law.

On 1/12/99 the respondents requested this court to file written submissions in support of their preliminary objections and that request was made by Llyoid, a request which was granted and it was accordingly ordered that applicants (City Commission) to file their written Submissions on or before 15/12/99 Written Submissions by the respondents to be filed on or before 29/12/99 and ruling on notice. Unfortunately, the applicants never filed their submissions in support of the preliminary objections whereas the respondents had filed their submissions

on 28/12/99, a day before the last day ordered by the court.

In their submissions, among other things, the respondents submitted that the preliminary objections be dismissed for want of prosecution; and secondly that, the applicants if it were not for the preliminary objections, they don't oppose the application for a representative suit as such.

The applicants had raised two points in their preliminary objections that:

- (1) The affidavit for an application for leave for representative suit by Mangenyule Irumbira and Selemani Nassero is incurably defective in terms of the verification and facts stated in itself.
- (ii) The persons on whose behalf a representative suit is sought, their identity is not well disclosed.

The applicants have failed to prosecute their objections on a points of law as how the affidavit of the applicants is defective. I therefore agree with the respondents that the failure by the applicants to file their written submissions in support of their applications is either due to negligence or secondly that they have found that there is no merits on the objections. They have, indirectly withdrawn their objections. Under the circumstances therefore, the preliminary objections are dismissed for non-prosecution and therefore leave to the applicants to file a representative suit is granted. No orders as to costs is made.

A. R. MANENTO

JUDGE

10/3/2000

10/3/2000

Coram - Manento, J.

Madaga/Luanda - For the Applicants

Lloyd - For the Respondent.

cc - Manumbu Mrs.

Court - The ruling is read in the presence of the parties.

A. R. MANENTO,
JUDGE

10/3/2000