

5. That the Respondent in this matter is a son to **Igino John Rwonthinga** who was one of those registered as tenant in common with equal shares who did on or about 1986.
6. That the Applicants and the persons they seek to present have lived, stayed and occupied the suit land since the 1980s with developments like houses, crops and have buried their loved ones on the land undisturbed for periods over 30 years.
7. That in or about 1999, the Respondent illegally registered himself as the sole owner of the suit land, and began tormenting and harassing the Applicants and persons they seek to represent by way of eviction, destruction of their houses and crops hence infringing on their rights to quiet possession of their respective pieces of land.
8. That the Respondent through his agents continues with their acts of intimidation, and harassment of the Applicants and the intended plaintiffs who have lived on the said land and acquired interests on the land by virtue of being *bonafide* occupants protected under the law.
9. That it is just and equitable that this application be granted or the Applicants will suffer irreparable damage.

[3] The Respondent on the other hand opposed the application and filed an affidavit in reply, the relevant grounds being briefly as follows;

1. That the Respondent is the registered proprietor of the suit land and that none of the Applicant or persons they seek to represent have an actual and existing interest in the ownership of the suit land.
2. That none of the Applicants or the persons they seek to represent qualifies to be *bonafide* occupants on the suit land in their respective capacities, the earliest of the persons named in the application having entered the suit land as recently as 1986 and most of the others having entered in the 1990s.
3. That the Applicants and the persons they seek to respect do not meet the constitutional requirements for a person to be granted rights as a *bonafide* occupant and in any case, their alleged claim of *bonafide* and or lawful occupants does not preclude the Respondent from dealing with the suit land as he is the registered proprietor and enjoys statutory rights.

[4] The Applicants now bring this application seeking a representative order to institute a suit on their behalf and on behalf of the 53 persons named in the proposed plaint.

Counsel Legal representation

- [5] The Applicants are represented by **Counsel Omala Daniel** of **M/s Byarugaba Paul & Co. Advocates, Hoima** while the Respondent is represented by **Counsel Kitamirike Pius** of **M/s Byenkya, Kihika & Co. Advocates, Kampala**. Both counsel filed their respective submissions for consideration in the determination of this application.

Issue for Determination

Whether the Applicants are entitled to an order to file a representative suit.

- [6] **O.1 r.8 (1) CPR** as amended provides thus;
“A person may institute a representative suit on behalf of all the plaintiffs and or defendants, as the case may be, who have the same actual and existing interest in the subject matter of the intended suit for the benefit of all.”
- [7] **O.1 r.8 (3) CPR** as amended provides for conditions that the Applicant must satisfy before the court grants an order for a representative suit as follows;
- a) All the plaintiffs or defendants, as the case may be, have an actual and existing interest in the subject matter of the intended suit.
 - b) All the persons represented have authorized the Applicant to sue or defend in the suit, or the authorization shall be in writing duly signed by the represented person.
 - c) The Application is brought with a proposed plaint or defence, as the case may be, showing the list of all persons so represented, and that all the persons so represented have the same actual and existing interest in the suit.
- [8] In the case of **Smith & Ors Vs Cardiff Corporation (1954) 1 QB 210** provided by the applicant, it was held that to bring a representative suit under R.S.C. ORD.16 r.9 (the equivalent of order 1 rule 8 of our CPR) it must be shown first, that all the members of the class had a common interest, that they all had a common grievance, and that the relief in nature is beneficial to all of them.

Condition 1: That the plaintiff or defendant as the case may be have an actual and existing interest in the subject matter.

- [9] Upon perusal of the affidavit in support of the application and in reply and the annexures thereto, I find it undisputed that the Applicants and the persons they seek to represent are all residents of **Kaborogota “B” Kituka II, and Namagonge “B” villages** which are comprised in the subject suit land described as **LRV 2747 Folio 1, Buruli Block 2 plot 2** land at Bulindi registered in the subject matter.
- [10] The Applicants and the persons they seek to represent claim that they have actual or existing interest in the subject matter having lived on the suit land and cultivated their respective pieces of land and developed the same with homes and buried their loved ones thereon for a period of 30 years.
- [11] The Applicants complain that the suit Land originally belonged to 3 people; **Igino John Rwonthingo, John Acamfula** and **Emilio Opiti** who were registered as tenants in common with equal shares from whom they claim their respective interests. It is their averment that the Respondent is a son of **Igino John Rwonthngo**, who they contend is entitled to the distinct share that belonged to his late father, and not the entire suit land.
- [12] Under **paragraphs 14, 15, 16, 17 and 20**, the Applicant deponed that after the Respondent illegally got registered as the owner of the entire suit land, he started tormenting and harassing the applicants and the intended plaintiffs by destroying their homes and crops.
- [13] The foregoing in my view established that the Applicants and the intended plaintiffs have an actual and existing interest in the subject matter in that they all seek to protect their beneficial interests in the suit land. They and the Respondent, all derive their interests from the 3 named original owners of the suit land. The rest of the averments and claims of the Respondent regarding whether the Applicants and the persons they seek to represent qualify to be *bonafide* occupants or not, the admissibility and consideration of the previous suit **C.S No.2 of 2021** and the legal protection, legality of the procurement of the certificate of title of the Respondent as the registered proprietor, are all matters that shall be the subject of trial where evidence shall be required during the determination of the suit.

[14] In conclusion, I find that the 1st condition for consideration in satisfaction for grant of an order for a representative suit has been fulfilled by the applicants.

Condition 2: All persons represented have authorized the Applicants to sue or defend the suit.

[15] The list as per **annexture “C” to the affidavit in support** of the Application where the intended plaintiffs gave their consent to the Applicants to file an application seeking an order to file a representative suit on their behalf against the Respondent herein has not been challenged. **Annexture “C”** referred to is a list of the persons, their National Identification Numbers (NIN) and the respective signatures of the 53 intended plaintiffs granting authorization to the Applicants to file a representative suit against the Respondent.

[16] I find that the 2nd condition for grant of an order for a representative suit has been accordingly satisfied.

Condition 3: The Application is brought with a proposed plaint or defence as the case may be.

[17] The Applicants have attached a copy of the proposed plaint (Annexture “B” to the affidavit in support). Under **paragraph 4 & 5 of the proposed plaint**, the Applicants/intended plaintiffs pleaded thus;

“4. The plaintiffs bring this suit on their behalf, and on the behalf of 53 persons who have granted consent to the plaintiffs to institute a suit on their behalf in a representative capacity.

5. That the plaintiffs’ claim against the defendant is for trespass to land, General damages for destructions caused upon the plaintiffs property, declaration that the plaintiffs are bonafide occupants.... Declaration that the defendant fraudulently procured registration of the entire suit land comprised in LRV 2747 Folio 1 Buruli Block 2 plot 2 Land Busindi...”

Under **paragraph 6(a) of the proposed plaint**, the Applicants pleaded that the plaintiffs and the persons they seek to represent are residents of Kaborogota “B” Kituka and Namagonge villages, Pakanyi Sub county, Masindi District which comprise **LRV 2747, Folio Buruli Block 2 plot 2**

at Busindi, referred to as the suit land which they have lived on and cultivated and have buried their loved ones.

[18] The foregoing is sufficient satisfaction for the 3rd condition for grant of an order for a representative suit since the proposed plaint shows both the list of all persons so presented (see annexure “C”) and that all the persons so represented have the same actual and existing interest in the suit land.

[19] **O.1 r.8 CPR** is intended to save time and costs because a representative action avoids the “granularity” of considering the individual claims of each of the represented parties; avoidance of a possibility of multiplicity of suits. The claims of the Applicants and those they seek to represent raise some common issues of law and fact such as; **(a)** all the parties derive their interest from the original 3 named tenants in common with equal shares of the suit land, **(b)** all claim to be in occupation of the suit land, **(c)** all are aggrieved of the alleged eviction and destruction of their properties and **(d)** the intended suit is based on the same cause of action of trespass and destruction/damages to their properties. It is therefore, in the circumstance just and fair that the application is granted so that the Applicants are permitted to bring a representative suit on their own behalf and on behalf of other 53 persons they seek to represent.

[20] The Application is in the premises granted in favour of the Applicants with the following orders;

1. A representative order doth issue granting the applicants powers to institute a representative suit against **James M. Kasavubu** (Respondent) on behalf of 53 (Fifty three) other plaintiffs.
2. The notice of institution of a suit shall be pinned on the High Court notice Board, Notice board at Pakanyi Sub county Headquarters and in the Daily New Vision Newspaper.
3. Costs of the application shall abide the outcome of the intended suit.

I so order.

Signed, dated and delivered at Masindi this **26th day of August, 2022.**

Byaruhanga Jesse Ruyema
JUDGE.

26/08/22

Applicants present

Respondent absent

Mr. Businge Steven holding brief for Pius Kitamirika for the Respondent.

Mr. Omara for the Applicant

Mr. Thembo: Clerk

Court: Ruling delivered in the presence of the above.

Signed

Byaruhanga Jesse Ruyema

JUDGE.