



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE**

Civil Suit 46 of 2008

CHARLES KHISA NGWENGWE.....APPLICANT.

VERSUS

**ISAAC NGOCHOCHI
AGRICULTURE FINANCE CORPORATION).....RESPONDENT.**

R U L I N G.

The preliminary objection notice is dated 17th December, 2009. It states:-

- (1) That the suit is incompetent and incurably defective, having been filed for and on behalf of a self-help group, without first seeking and obtaining a representation order under order 1 rules 8 of the Civil Procedure Rules.
- (2) The filing of the suit amounts to an abuse of the due process of the honourable court.

When the application came up for hearing on the 3rd day of February, 2010, Mr. Kiarie appeared for the first defendant. Mr. Ngaira appeared for the 2nd defendant. There was no representation on behalf of the plaintiff. The hearing thus proceeded ex-parte with the leave of the court.

Mr. Kiarie for the 1st defendant submitted that the suit is filed for and on behalf of a self-help group know as Ndelema Self Help Group without due compliance with the provisions of order 1 Rule 8 of the Civil Procedure Rules.

Mr. Ngaira for the 2nd defendant associated himself with the submission of Mr. Kiarie for the 1st defendant and rested his submission.

On the pleadings, it is clear to me from the plaint that the suit is a representative suit. Even the heading of the plaint says so. Equally, the verifying affidavit says so. That notwithstanding, there is no evidence that the provisions of Order 1 Rule 8 of the Civil Procedure rules were complied with.

Order 1 Rule 8 of the Civil Procedure Rules provides:-

“ 8 (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued, or may be authorized by the court to defend in such suit, on behalf of or for the benefit of al persons so interested.

(2)The court shall in such case direct the plaintiff to give notice of the institution of the suit to all such person either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

(3.) Any person on whose behalf or for whose benefit a suit is instituted or defendant under subrule (1) may apply to the court to be made a party to such suit. ”

From the wordings of Order 1 rule 8 of the Civil Procedure Rules, it is clear to me that a plaintiff who intends to file a representative suit must comply with the provisions of the said order. The said order is couched in mandatory terms. As the plaintiff has failed to comply with the same the preliminary objection succeeds.

Accordingly the suit is struck out with costs to the 1st and 2nd defendant.

Dated and delivered at Kitale this 23RD OF FEBRUARY 2010.

N.R.O. OMBIJA.
JUDGE.