



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
Miscellaneous Application 40 of 2009
PATRICK BARASA ::::::::::::::: APPPLICANT.
VERSUS

JOB MAKOKHA WANJALA ::::::::::::::: RESPONDENT.
R U L I N G.

By a Notice of Motion pursuant the order 1 Rule 8 of the Civil Procedure Rules, the applicant seeks orders:-

1. **THAT**, the applicant be granted leave to file a representative suit on behalf of himself and TOWER – MNARA SELF-HELP GROUP.
2. Costs be provided for.

The application is based on the grounds.

- (a) **THAT**, the applicant is the overseer of the group.
- (b) **THAT**, the applicant needs to file suit to protect the property of the group.

The application is supported by the annexed affidavit of Patrick Barasa sworn on the 15th day of June, 2009.

It was contended on behalf of the applicant that Tower-Mnara Self Help Group is a duly registered Self-Help Group with over 200 makers. A certificate of registration is exhibited as “PB1”.

The said group intends to file a suit against the respondent who has refused to vacate plot No. 1555, Chebarus farm purchased from John Aliang’o vide exhibit “PB2”.

Order 1 Rule 8 of the Civil Procedure Code 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. ”*

I have scanned through the affidavit evidence by way of affidavit in support and came to the conclusion that since the member of the group has not given authority in writing to Patrick Barasa, the applicant, to institute the suit on their behalf the application is bad in law. Accordingly, I strike out the application with leave to the applicant to file a fresh competent application.

Dated and delivered at Kitale this 23rd day of February, 2010.

N.R.O. OMBIJA.
JUDGE.

