

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

CIVIL APPEAL NO. 50 OF 2015

(CORAM: KILEO, J.A., MBAROUK, J.A., And MASSATI, J.A.)

THE REGISTERED TRUSTEES OF BAKWATA APPELLANT

VERSUS

**THE REGISTERED TRUSTEES OF
DODOMA GENERAL MUSLIM RESPONDENT**

(Appeal from the Judgment of the High Court of Tanzania at Dodoma)

(Shangali, J.)

dated the 30th day of October, 2015

in

Civil Case No. 6 of 2015

RULING OF THE COURT

KILEO, J.A.:

When the matter was called on for hearing Rev. Kuwayawaya S. Kuwayawaya, learned counsel for the appellants applied to Court to have the appeal be marked withdrawn. A notice of withdrawal of the appeal under Rule 102 (1) of the Court of Appeal Rules 2009 (Court Rules) had been lodged earlier on in Court by the learned counsel on 5/6/2015. He

further prayed that the appeal be marked withdrawn with no order as to costs as the parties are both religious institutions.

Mr. Godfrey Wasonga, learned advocate representing the respondents asked the Court to dismiss the appeal with costs in terms of Rule 102 (4) of the Court Rules as his clients had not consented to the withdrawal of the appeal. When it was pointed out to Rev. Kuwayawaya that Rule 102 (1) was not applicable in the circumstances of the case as the notice of withdrawal was lodged after the appeal had been listed for hearing, he prayed instead that Rule 4 (2) (a) of the Court Rules be invoked and the matter be marked withdrawn. In view of the application for withdrawal of the appeal by the appellants the same is marked withdrawn under Rule 4 (2) (a) of the Court of Appeal Rules. The issue of costs has exercised our minds, especially following Rev. Kuwayawaya submission that costs should not be ordered considering that both parties are religious institutions of the same sect and hence the need for promotion of harmony.

On our part, we think however, that since the appellants waited until the matter was scheduled for hearing to file the notice of withdrawal they should be liable to costs. If they had followed the procedure laid down

under Rule 102 a lot of time for both the court and the parties would have been saved. In the end we mark the appeal withdrawn under Rule 4 (2) (a) of the Court Rules with an order that the respondents be entitled to their costs.

It is accordingly ordered.

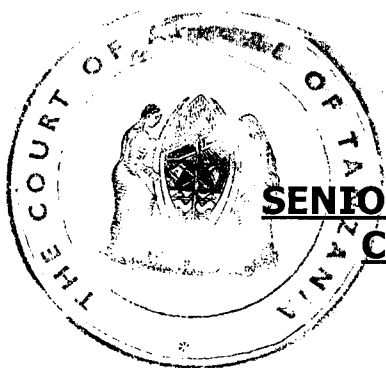
DATED at **DODOMA** this 10th day of June, 2015.


E. A. KILEO
JUSTICE OF APPEAL

M.S. MBAROUK
JUSTICE OF APPEAL

S. A. MASSATI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.




P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL