

**IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 118 OF 2018**

**GLOBAL MINING COMPANY LIMITED.....PLAINTIFF**

**VERSUS**

**GULF CONCRETE AND CEMENT**

**PRODUCTS COMPANY LIMITED.....DEFENDANT**

**RULING**

*Date of last order 09/10/2019*

*Date of Judgment 10/10/2019*

**NGWALA, J.**

On 3<sup>rd</sup> July 2018 the plaintiff filed this suit against the defendant for payment of Tshs, 1,400,000/= being special and exemplary damages for loss of income expected in the mining site and repeated interference with the plaintiff's mining Licence regardless of warnings and orders from the Commissioner of Mining.

They also prayed for general damages, interest at the rate of 20% to the decretal sum and the costs of the suit.

The defendants, through their Written Statement of Defence denied those claims and prayed for the dismissal of the suit with costs for lack of merit. They also prayed for a declaration order that the

Defendant is the Lawful owner of the landed property where the Primary Mining Licence situates.

When the matter came up for hearing of the preliminary objection on points of law that had been raised by the counsel for the plaintiff, on two grounds that the Written Statement of Defence was bad in law for containing improper verification and for not being signed by the defendant, the plaintiff prayed to withdraw the suit with leave to refile under Order XXII Rule 1 (1) and (2) of the Civil Procedure Code [Cap. 33. R.E. 2002]. They also prayed for the said order without costs.

The learned counsel for the defendant didn't object the prayer for permission to withdraw the suit with leave to refile. He however contested the argument that they were not entitled to costs, on the ground that the plaintiffs were at liberty to institute a fresh suit in respect of the subject matter of that suit or part of the claim in terms of Order XXIII 1 Rule 2 (b) of the Civil Procedure Code. He argued that the defendant were entitled to costs because they have suffered inconveniences as a result of this suit which is not making any advancement to finalizing the case as the plaintiff shall institute a fresh suit.

I am in entire agreement with the view by the counsel for the defendant that they are entitled to costs because the plaintiffs are at liberty file a fresh suit. This is so because the withdrawal by the plaintiff is not a bar to instituting any fresh suit in respect of such subject matter or such part of the claim as provided for under

**Order XXIII Rule (3) of the Civil Procedure Code, (Cap. 33 R.E. 2002]** that reads:-

“Where the plaintiff withdraws from a suit or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim”.

In this respect as the defendants have shown sufficient reasons for claiming costs, the plaintiff is granted leave to withdraw the suit, with liberty to refile a fresh suit subject to limitation. The defendants are entitled to costs that shall be taxed by the District Registrar.

**Order Accordingly.**



**A. F. Ngwala**

**JUDGE**

**10/10/2019**