

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
CIVIL APPEAL NO. 169 OF 2018**

*(Arising from Misc. Civil Application No. 764 of 2017, Originating from
Civil Case No. 381 of 2014 Kisutu Resident Magistrate's Court)*

UNIVERSITY OF DAR ES SALAAM.....APPELLANT

VERSUS

JOAKIM C. KAUKI.....RESPONDENT

RULING

Date of Last Order: 30/7/2019

Date of Ruling: 17/10/2019

S.M. Kulita, J.

The Appellant, University of Dar es Salaam through its Counsel Mr. Petro Mselewe - Advocate prayed to withdraw this appeal with no order as to costs. Advocate for the Respondent (Joakim C. Kauki) Learned Counsel Thobias Kavishe objected the 2nd prayer by the Appellant's Advocate that the withdrawal be without costs. Mr. Kavishe said that since the Respondent and his Advocate used to attend the court for this matter he prays for the withdrawal be with costs. The reason behind the said prayer by the Appellant's Counsel is that they themselves noticed the presence of fault in their appeal that it is time barred and they willingly decided to withdraw the matter that's why they pray it be

made without costs.

Upon going through the records I have noticed that the matter was at the early stage while it was prayed by the Appellant's Counsel to be withdrawn. The Respondent's Counsel appeared about four times, the dates on which the matter was for mention due to the presence of administrative issue as to whether the memorandum of appeal was lodged in time or not. Finally, it was concluded by the Deputy Registrar through his letter to the Appellant dated 27/6/2019 that it was lodged on the date which was out of the prescribed period of 30 days that was granted by the trial Judge in the Misc.Civil. Appl No. 764/2017, from which this appeal emanates.

The Respondent's Counsel claimed for costs on that 30/7/2019, the date that the Appellants Counsel had prayed to withdraw the appeal. However, I don't see any reasonable justification for the said claim as the records show that before that date the Respondent's Counsel had attended the court only three times for this appeal and he had not filed any document to court from which we could said he has incurred some costs like payment of court fees or stationary for the document he ought to have filed.

Actually nature of the case being "appeal" the Respondent is not obliged to file a reply. However, he can lodge a Notice of Preliminary Objection if he finds the presence of error(s) on legal issue(s) in respect of the petition/memorandum of appeal that has

been filed. As for this matter the Respondent's Counsel had not filed a Notice of Preliminary Objection though he orally addressed the court that the appeal was time bared. That led the presiding Judge to order the Appellant's Counsel to address the court on the competence of the appeal in respect of that issue. Save for that oral submission by the Respondent's Counsel he never filed the notice of Preliminary Objection in a written form till the matter was prayed to be withdrawn by the appellant's counsel.

Generally, we cannot regard that the appellant or his counsel has incurred any costs which can make him to file an application to claim.

The only costs that he might have incurred is the advocate's transport costs between his office and the court premise of which can be a wastage of resources and time to claim, not only to the Appellant but also to Advocate/Respondent himself as the said claim can involve a very small amount of money which can just be ignored by regarding the Appellant's wisdom to withdraw the appeal.

In **JOHN KASHEKYA V. THE ATTORNEY GENERAL, Civil application No 36 of 2002, CAT at Dodoma (Unreported)** it was held;

"There is no order for costs since the respondent did not file any Counter Affidavit to the application nor did he file any list of authorities"

Therefore the Respondent in the matter at hand cannot be

awarded costs as he had not yet filed any document to court before the appeal was withdrawn by the Appellant at that very early stage.

In upshot the appeal is withdrawn with no order as to costs.



S.M. Kulita

JUDGE

17/10/2019