

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
LAND CASE NO. 18 OF 2019
LUSIUS KAPUNGU.....PLAINTIFF
VERSUS
GULF BULK PETROLEUM (T) LIMITED.....DEFENDANT

RULING

29/10 & 29/10/2019

S.M. Kulita, J.

Having noticed that the Preliminary Objection raised by the Respondent's Counsel has merit Advocate for the Plaintiff conceded with it before the same being heard. He prayed to withdraw the suit with leave to refile but without costs to the Defendant. The reason behind according to the Plaintiff's Counsel Mr. George Masoud is that the Plaintiff is incapable to pay the costs. He further said that in addition to that the matter involves the probate estate which has been wrongly sold to the defendant by one of the deceased's relative.

The Defendant's Advocate Mr. Edward Mwakingwe denied to waive the costs as they have already entered several appearance and spent efforts to deal with the matter up to this stage.

Ordinarily, the fact that the plaintiff decides to withdraw his case or the case is dismissed with or without leave to refile by the court

the said plaintiff has to bear the costs, unless there are sufficient reasons that the court finds it not proper to grant. As for the matter at hand the defendant has already filed a Written Statement of Defence (WSD) through his advocate who has already entered appearance thrice. The plaintiff also paid filing fees for the said WSD and written submissions. This means that the Defendant has already incurred costs of which he should be compensated by the Plaintiff.

The issue of nature of the case being Probate & administration Cause by origin has nothing to do on this matter which is a pure Civil Case between the said administrator of estate who is the plaintiff and the defendant whom the plaintiff's advocate alleges to have purchased the plot from a wrong person, that is one of the deceased's relative though I don't see that person being a party (defendant) to this matter. Furthermore, the Advocate has not told this court that he represents the plaintiff at free of charge. If he manages to pay the Advocate it means he is not a pauper, hence he is capable to pay the costs incurred by the Defendant in this matter.

In upshot the suit is hereby dismissed with leave to refile. The plaintiff to bear the costs.



S.M. Kulita

JUDGE

29/10/2019