

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM  
MISC. LAND APPLICATION NO. 15 OF 2021**

**THE REGISTERED TRUSTEES OF MORAVIAN  
CHURCH IN SOUTHERN TANZANIA.....APPLICANT**

***VERSUS***

**TANZANIA ZAMBIA RAILWAYS**

**AUTHORITY.....1<sup>ST</sup> RESPONDENT**

**ILALA MUNICIPAL COUNCIL.....2<sup>ND</sup> RESPONDENT**

**THE COMMISSIONER FOR LAND.....3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY**

**GENERAL ..... 4<sup>TH</sup> RESPONDENT/NECESSARY PARTY**

**RULING**

Today, 18/5/2021 when this matter was called on for hearing the Preliminary Objection that had been raised by the Respondents' Counsel Mr. Thomas Mushi (State Attorney), Advocate for the Applicant Mr. Barnaba Lugua prayed to withdraw the application for the reason that it is overtaken by event.

Mr. Lugua said that there is a Land case No. 9 of 2021 and its application for injunction, Misc. Land Application No. 18 of 2021

which had been filed after the expiry of the statutory 90 days' notice to sue the Government. It had been filed prior to this current application. He said that unlike this application which was filed just for the purpose of *seeking injunction* pending filing of the main suit after expiry of the 90 days notice to sue the Government, in the said Misc. Land Application No. 18 of 2021 which originates from the pending Land Case No. 9 of 2021 the said issue of *seeking injunction* will be determined. That's why he prays to withdraw this application at hand.

The Counsel stated that as those other suits are sufficient to serve the purpose for now, he finds this Misc. Land Application No. 15 of 2021 unnecessary as its purpose is overtaken by event. He prays to withdraw it with no order as to costs. He submitted that his prayer for the court to waive the costs is due to the nature and circumstance of the case that led to the occurrence of the situation, that there is no any negligence on the part of the applicant which caused the said situation to happen.

On the other hand, the Respondents' Counsel Mr. Thomas Maushi (State Attorney) prayed for the withdrawal to be accompanied with an order for costs as they have already spent time, materials and efforts in dealing with this matter of which the Applicant's Counsel now prays to withdraw.

From the aforesaid submissions, it is my view that efforts, time and resources must have been spent by the Respondents' Counsels in preparing the documents/pleadings including the joint counter affidavit which is accompanied with a notice of Preliminary Objection, though the same are not going to be argued. The Respondents' Counsels being ready for hearing the Preliminary Objection today implies that they had conducted a research on the Preliminary Objection they had intended to argue.

Generally, for all what the Respondents' Counsels have done, they deserve to be awarded costs. Even if the Applicant had not intended this to happen as alleged by her Counsel, the fact that she is one who instituted the application there is no way she can waive the costs liability.

In upshot this application is hereby marked withdrawn as so prayed by the Applicant's Counsel. The Applicant to bear the costs.



**S.M. KULITA**

**JUDGE**

**18/05/2021**

