

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND CASE NO. 43 OF 2021**

**JACOB GABRIEL MUYA (Suing as the Administrator of the Estate of  
the late Gabriel Mganga Muya) ..... PLAINTIFF**

**VERSUS**

**CUTHBERT JUSTINE MRISHA (Administrator of the Estate of the  
late Grace Muya) ..... 1<sup>st</sup> DEFENDANT**

**THE REGISTRAR OF TITLES .....2<sup>ND</sup> DEFENDANT**

**THE ATTORNEY GENERAL OF THE**

**UNITED REPUBLIC OF TANZANIA .....3<sup>RD</sup> DEFENDANT**

**RULING**

13<sup>th</sup> & 17<sup>th</sup> June, 2022

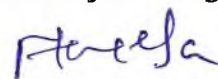
**N.R. MWASEBA, J.**

The plaintiff being an administrator of the estate of the late Gabriel Muya has filed this suit against the defendants herein that the first defendant is trespassing in the suit land without justifiable claim and the second defendant is colluding with the first defendant to confiscate the suit land.

*Handwritten signature*

He therefore prays for the court to enter judgment and decree against the defendants as follows:

- i. A declaration that the suit land with below details is the property of the late Gabriel Muya; **CT, NO, 055022/19, L.O NO. 11963, Plot No. 20 Block" S"; SIKH UNION STREET ARUSHA CITY;**
- ii. A declaration that the 1<sup>st</sup> defendant is a trespasser to the suit land
- iii. An order of permanent injunction restraining the 1<sup>st</sup> defendant and or his agents from trespassing or interfering with the suit land
- iv. An order that the 1<sup>st</sup> defendant reimburse the plaintiff all the rent he has collected as from January 2020 to present and up to when the suit shall be finally settled at the tune of Tshs. 350,000/= per month plus interest of 7% per annum
- v. An order to compel the Registrar of Titles to bring the title No. **CT, NO, 055022/19, L.O NO. 11963, Plot No. 20 Block" S"; SIKH UNION STREET ARUSHA CITY;**
- vi. Costs of this case
- vii. Any other relief (s) this hon court will deem fit and just to grant.



In court, the plaintiff was represented by Mr Steven Magambo Learned Counsel, the 1<sup>st</sup> defendant was represented by Ms Miriam Nitume who was engaged after filing the written statement of defense and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants enjoyed the service of Mr Mkama Msalama Learned State Attorney.

In his written statement of defense, the 1<sup>st</sup> defendant raised a preliminary objection that the suit is time barred. But on 28/3/2022 he withdrew his Preliminary Objection and his prayer was granted with no order as to costs.

Likewise, the learned state attorney for the 2<sup>nd</sup> & 3<sup>rd</sup> defendants raised a Preliminary objection on the point that:

1. This suit is premature for being instituted prior to issuance of a ninety (90) day notice to the defendants contrary to **Section 6 (2) of the Government Proceeding Act**, [Cap 5 R.E 2019].

When the case was fixed for hearing of the preliminary objection on 13/6/2022 Mr Magambo Learned Counsel for the Plaintiff conceded to the preliminary objection and prayed the matter to be withdrawn with leave to refile. He prayed that each party bear its own costs.



Ms Nitume Learned Counsel for the 1<sup>st</sup> defendant did not object the prayer for withdrawing the suit but sought for costs of the case as they have incurred costs in conducting some research in due course of defending their case.

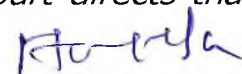
Mr Mkama learned state Attorney for the 2<sup>nd</sup> and 3<sup>rd</sup> respondent also did not object the prayer for withdrawing the case but he prayed that the court see if they deserve to be given costs.

Rejoining to the defendants' submission, Mr Magambo Learned Counsel reiterated that they pray for the costs to be waived as he has conceded to the Preliminary objection.

After having submissions from both sides, the issue for determination is whether the parties are entitled to costs of the case.

It is a well-known principle that granting costs is a discretion of the court. Nonetheless, the same has to be exercised judiciously. This was well stated in the case of **Anna Ufoo Ulomi Vs. Ramadhani Mohamed, Land Appeal No. 15 of 2016.**

*"Regarding costs, the law gives discretion for the court/tribunal to impose costs. Where the Court directs that*



*no costs shall be paid, the court shall state its reasons;  
section 30 (1) of the Civil Procedure Code."*


In the above case the court said where the court directs that no costs shall be paid it shall give reasons. In the case at hand there is no dispute that parties have incurred costs. However, the case is at its early stages and the Plaintiff has conceded to the preliminary objection raised by the learned State Attorney for the 2<sup>nd</sup> and 3<sup>rd</sup> defendant without wasting the precious time of the court and other parties.

Therefore, I grant the prayer to withdraw the case with leave to refile with no order as to costs.

It is so ordered.

**DATED at ARUSHA** This 17<sup>th</sup> day of June, 2022.



  
**N. R. MWASEBA**

**JUDGE**

**17/6/2022**