

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY OF ARUSHA]

AT ARUSHA

LAND CASE NO. 24 OF 2022

SESILIA GETAGNO.....PLAINTIFF

VERSUS

SERIKALI YA KIJIKI CHA HYDOM1ST DEFENDANT

ATTORNEY GENERAL.....2ND DEFENDANT

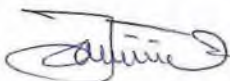
RULING

16th August, 2022

TIGANGA, J.

In this case the plaintiff Sesilia Getagno sued the defendants for trespassing into her 2848 meter squares farm bordered with Hydrom Hospital and Qorong'ayda valley which she acquired together with her late husband and has been using it since 1958 and they were officially allocated in the year 1974 during operation vijiji and continued to develop the said land for planting trees and grazing purpose.

When the defendants were served with the plaint the learned State Attorney for the 2nd defendants as well as the counsel for the 2nd defendant raised the preliminary objection on points of law that;

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defendants in terms of section 6 (2) of the Government Proceedings Act, [Cap 5 R.E 2019] and the prayer that the suit be struck out without costs which was not objected by the counsel for defendants save for the prayers to wave costs which he resisted, I find merit on the said preliminary objection as conceded. Consequently, basing on the concession by the plaintiff, the suit at hand is hereby struck out as that is the only remedy available.

Regarding the issue of costs, from the record, and their submission in rejoinder, I find it aptly to point out that, it is the stand of the law that, in any suit the victorious party must as a matter of law be entitled to costs. However, the issue of awarding or refusing costs is on the discretion of the court. In so awarding, the court needs to consider a number of factors, one of those factors being the industrious involved in prosecuting or defending the case, the time taken to prosecute or defend the case, and the manner in which the case or suit was terminated.

In this case the defendant is the Government, the matter has terminated at the preliminary stage after the plaintiff has conceded the preliminary objection raised by the defendant. That means, the plaintiff has saved the pressures time of this court and that of the defendant. In my view, the plaintiff is a leniency deserving. That said and considering the status of

the defendant *vis a vis* that of the plaintiff, I wave the award of costs. That being the case, the order trucking out the suit is without costs.

It is accordingly ordered.

DATED at **MWANZA** this 16th day of August 2022



A handwritten signature in blue ink, appearing to read "J. C. Tiganga".

J. C. TIGANGA

JUDGE