

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

**(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**MISCELLANEOUS LAND APPLICATION NO. 10 OF 2022**

*(Arising from Songea District Land and Housing Tribunal Land Case No. 69 of 2014)*

**THE REGISTERED TRUSTEES OF THE**

**CATHOLIC ARCHDIOCESE OF SONGEA ..... 1<sup>ST</sup> APPLICANT**

**HALIFA NIHAMBA ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**BENEDICT MABALANGANYA..... RESPONDENT**

**RULING**

**Date of last Order: 25/10/2022**

**Date of Ruling: 25/10/2022**

**MLYAMBINA, J.**

This Court has for a number of times maintained that the controlling factors for awarding costs are founded on justice and common sense. Such Principle is reflected on *inter alia* cases of **Mwanaisha Ally Mbalika (Administratrix of the Estate of the Deceased Christian Mbalika Hyera v. Juma Ally Mbalika and 4 Others**, Miscellaneous Application No. 11 of 2021 High Court of Tanzania, Songea District Registry at Songea (unreported). Squarely to that Principal, the Applicant through representation of Senior Counsel

Rwezaula Kaijage, upon conceding to one of the three *plea in limine litis* raised by Counsel Dickson Ndunguru, beseeched the Court to waive costs.

The reasons advanced by Senior Counsel Rwezaula were basically that; *One*, the Applicant conceded on the first day of mention of this application that the application is incompetent for being accompanied by incurable defective affidavit. *Two*, by the time the Applicant filed this application the orders for ex-parte Judgement date were yet fixed by the District Land and Housing Tribunal. As such, the ex-parte Judgement order overrides this application.

On his part, Counsel Dickson Ndunguru prayed for costs be paid because his client has paid instruction fees and Court filing fees. In the alternative, he prayed for half costs.

I have dutifully considered the two opposing prayers of both Counsel Rwezaula and Dickson and applied the principle of justice and common sense in this application. I understand that award of costs is at the discretion of the Court which has to be exercised judiciously. In the case of **Nkaile Tozo v. Phillimon Musa Mwashilanga** [2002] TLR 276, the Court held:

*...the awarding of costs is not automatic...  
costs are entirely in the discretion of the*

*Court and they are awarded according to the facts and circumstances of each case...*

It is not disputed by both Parties that the proceeding [*Land Application No. 69 of 2014*] of which the Applicant wanted to challenge before this Court is still in the legal domain of the District Land and Housing Tribunal for Songea at Songea.

Further, both Parties are not contesting that *Land Application No. 69 of 2014 (supra)* is set for ex – parte Ruling on 31<sup>st</sup> October, 2022.

Moreso, the Respondent has not disputed that the Applicant became aware of the true state of affairs about the date fixed for ex–parte judgement of *Land Application No. 69 of 2014* after they filed this application.

I find the decision of the Applicant to concede with the *plea in limine litis* at an early stage is a wise decision. It will afford opportunity to both parties for exhausting the available legal remedies before the trial Tribunal.

Indeed, the decision of the Applicant at this stage will serve precious time and further costs of the Parties and of the Court on this interlocutory application which won't determine the substance of the dispute in *Land Application No. 69 of 2014 (supra)*.

In any case, whoever who will be aggrieved with the decision of the trial Tribunal and upon exhausting the available local remedy (if any), will have a legal right to appeal before this Court.

In the circumstances of the above, I decline to award costs at this stage. Consequently, the application stands struck out for been accompanied with an incurable defective affidavit.

It is so ordered



**Y. J. MLYAMBINA**

**JUDGE**

**25/10/2022**

Ruling delivered and dated 25<sup>th</sup> October, 2022 in the presence of Senior learned Counsel Rwezaula Kaijage for the Applicants and learned Counsel Dickson Ndunguru for the Respondent.



**Y. J. MLYAMBINA**

**JUDGE**

**25/10/2022**