

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND CASE NO. 41 OF 2021

REGINALD AWE KWAANG'W (Suing as Administrator

Of the Estate of Late Awe Kwaang'w)PLAINTIFF

VERSUS

MIDABINI PRIMARY SCHOOL.....1ST DEFENDANT

MANG'OLA JUU VILLAGE COUNCIL.....2ND DEFENDANT

DISTRICT EXECUTIVE DIRECTOR.....3RD DEFENDANT

KARATU DISTRICT COUNCIL.....4TH DEFENDANT

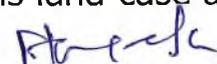
ATTORNEY GENERAL.....5TH DEFENDANT

RULING

22.03.2022 & 24.03.2022

N.R. MWASEBA, J.

Reginald Awe Kwaang'w (Suing as Administrator of the Estate of Late Awe Kwaang'w), the plaintiff herein instituted this land case against



the defendants. The claim by the plaintiff is that, the defendants trespassed into his 10 acres' land which was previously owned by the late Awe Kwaang'w. The reliefs sought by the plaintiff includes among others; - An order that he is the lawful owner of the suit land; The order that defendants claim over the disputed land is illegal and unlawful hence they are trespasser; an order restraining the 1st defendant and or his agents, workmen and others acting under him from trespassing, entering and using the land in dispute; costs of the suit and any other orders as the Court may deem just to grant.

Prior to the hearing of the case, the counsel for the defendants raised two points of preliminary objection, to wit:

1. That, the plaintiff has no locus standi to sue as an administrator of estate of Late Awe Kwaang'w.
2. That, the suit is premature and incompetent for contravening with **Section 6 (2) of the Government Proceedings Act** [Cap 5 R.E 2002] as amended by the Written Laws (Miscellaneous Amendments) Act, No. 1 of 2020.

In this suit Ms. **Lucia Nchagwa Benedicto**, learned advocate appeared for the plaintiff while **Mr. Mkama Msalama** assisted by

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Ms. Zamaradi Johanness, both learned state Attorneys appeared for the defendants.

When the matter was called for mention on 22nd day of March 2022, the learned state attorneys for the defendants informed the court that they have raised a preliminary objection and pray for a hearing date. However, he learned counsel for the plaintiff conceded to the raised Preliminary Objection for the reason that, there is no proof of service to other defendants apart from the 4th defendant only and that there is a minor difference on the name of the plaintiff herein which could bring complication in the future. So, she prayed for the suit to be strike out with leave to refile.

Responding to what was submitted by the plaintiff's counsel, Mr. Mkama prayed for the court to strike out the suit with costs since the they had been meeting with all the defendants in order to prepare their defence and the 1st, 2nd and 3rd defendants have travelled from Karatu to Arusha which costed them. Moreover, even their office incurred costs when they were preparing documents to be filed before the court.

In brief rejoinder, Ms. Mushi argued that since they have conceded to the Preliminary objection at the first time the matter was called for

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mention, and both parties have merely incurred costs she prayed for both parties to bear its own costs.

Having closely examined the submission by the counsels for the parties, as the plaintiff has conceded to the preliminary objection the main issue to be considered by this court is whether the suit should be strike out with costs or not.

Granting costs is upon court discretion, however the said discretion must be exercised without abuse or prejudicial to either party in the suit. Where the Court directs that no costs shall be paid, the court shall state its reasons. See **Section 30 (1) and (2) of the Civil Procedure Code**, Cap. 33 R.E 2019. The counsel for the defendants seeks for costs of this suit alleging that the defendants incurred costs in preparing their written statement of defence, on the other hand the plaintiff's counsel is of the view that the matter should be struck out without costs as she conceded to the preliminary objection on the very first date the matter was called for mention. I concur with the counsel for the plaintiff.

The counsel for the plaintiff conceded to the preliminary objection on the first date the matter was fixed for mention. She did not want to waste more time for the court and the defendant too. The defendant

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due to his status is exempted to pay court fee. Therefore, due to the said circumstances, I hereby sustain the preliminary objection. The suit is struck with no order as to costs.

Ordered accordingly.

DATED at **ARUSHA** this 24th day of March, 2021.


N.R. MWASEBA

JUDGE

24.03.2022

