

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**CIVIL REFERENCE NO. 11 OF 2022**

(Arising from Taxation Cause No. 39 of 2021)

**BETWEEN**

**EDWIN MTEI.....APPLICANT**

**VERSUS**

**FINN CONSTRUCTION COMPANY LIMITED.....1<sup>ST</sup> RESPONDENT**

**FINNAGRI LIMITED.....2<sup>ND</sup> RESPONDENT**

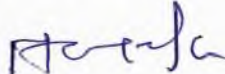
**FINN VON WURDEN PETERSEN.....3<sup>RD</sup> RESPONDENT**

18 &19 April, 2023

**RULING**

**MWASEBA, J.**

This application is made under Order 7(1) of the Advocates Remuneration Order of 2015. The applicant is seeking for an order of this court to vary, alter and change the by reducing the amount awarded as costs in the ruling and certificate of Taxation Cause No. 39 of 2021 to conform with fees prescribed by the Advocate Remuneration Orders of 2015.

The application has been accompanied by the affidavit of Catherine Edna Edwin, learned counsel for the applicant. 

When the matter was called for mention on 18/04/2023 Mr John Mushi for the applicant prayed to withdraw the matter without costs. He told the court that they had agreed so because the matter was yet to be determined.

Responding to the applicant's prayer, Mr Nyamwero learned counsel for the respondent did not object the matter to be withdrawn but he asked for costs as his client had already incurred costs to engage an advocate and filing counter affidavit.

In his rejoinder, Mr Mushi insisted that as the matter has not been determined yet, he prayed for the court to use its wisdom for not granting costs.

After having the submissions from both parties, there is no dispute for this matter to be withdrawn. The dispute that calls for my determination is whether the matter should be withdrawn with costs or not.

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*

*Anna*


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

The principle laid down in the above mentioned case requires the court in exercising its discretion, to grant costs to the winner or if not, to give reasons for not granting costs.

This has moved me to go through the record. I agree with the counsel for the applicant that the matter is still at the initial stage. The record does not show if the respondent was served or not. It shows that on 17/10/2022 when the matter was mentioned for the first time Mr Innocent Mwanga Learned counsel for the respondent appeared in court and submitted that he had just heard the case being called by using a speaker so he had decided to appear. He further filed his counter affidavit on 24/10/2022. All this was done by the respondents without being served. Thereafter, the counsel for the applicant decided to withdraw the application. Due to that scenario, and in order to avoid multiplicity of litigations I opt not to grant costs.

For the above reasons, the application is hereby withdrawn without costs as prayed.

It is so ordered.



**DATED** at **ARUSHA** This 19<sup>th</sup> day of April, 2023.



*N. R. Mwaseba*  
**N. R. MWASEBA**

**JUDGE**