

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC. LAND APPLICATION NO. 37 OF 2022

*(Originating from Land case No. 5 of 2014)*

ARDHI PLAN LIMITED..... APPLICANT

VERSUS

REDDING FARM & ENTERPRISES LIMITED.....RESPONDENT

RULING

27/10/2023

**KINYAKA, J.:**

When the application was called for hearing today, counsel for the Applicant, Ms. Upendo Msuya, informed the court that she concedes to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent's preliminary objection attacking the competency of the application before the court. Ms. Msuya submitted that the Applicant has noted that there is a pending appeal before the Court of Appeal challenging the decision of the court the subject matter of the present application. She prayed that the application be struck out without costs.

Advocate Ipanga Kimaay who appeared for the 1<sup>st</sup> Respondent did not object to the Applicant's prayer for striking out the application as

according to him, the application is incompetent. Counsel withdrew his preliminary objections as he did not intend to prosecute them.

Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, Mr. Mkama Musalama did not object to the prayer for striking out the application. However, he prayed for costs for court attendances and time spent in the preparation of the documents and hearing.

In rejoinder, Ms. Msuya reiterated her prayer to be spared with costs.

The Applicant's application sought the intervention of this Court to make orders emanating from the decision of this Court in Land case No. 5 of 2014 which was decided in favour of the Applicant. The first Respondent was aggrieved by the said decision and preferred a notice of appeal to the Court of Appeal on 26/07/2016. Later on, the 1<sup>st</sup> Respondent lodged an appeal on 06/08/2021 which is still pending before the Court of Appeal. The present application was filed on 5<sup>th</sup> April 2022 while the notice of appeal and the appeal are before the Court of Appeal.

It is clear from the submissions of the parties that the present application is incompetent. Parties are not contesting that the present application should be struck out. It is a settled position of law that once a notice of appeal is lodged in the Court of Appeal, the High Court cases to

have jurisdiction over matters relating to the dispute. In the case of **Exaud Gabriel Mmari (As Legal and Personal Representative of the Estate of the late) Gabriel Barnabas Mmari v. Yona Seti Akyo and 9 others, Civil Appeal No. 91 of 2019** the Court of Appeal cited with approval the case of **Milcah Kalonde Mrema v. Felix Christopher Mrema, Civil Appeal No. 64 of 2011** (unreported) which held that: -

*'It is now settled that once a notice of appeal to this court have been duly lodged, the High Court cases to have jurisdiction over the matter.'*

In view of the above findings and decision, I find the Applicant's application incompetent and I proceed to strike it. Considering the concession of the preliminary objection by the learned Counsel for the Applicant, that has greatly saved the time of this court and the parties, I do not find it appropriate to order costs. I order each party to bear its own costs.

It is so ordered.

**DATED** at **ARUSHA** this 27<sup>th</sup> of October 2023



  
**H. A. KINYAKA**  
**JUDGE**