

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
AT SUMBAWANGA
LAND CASE NO. 1 OF 2019**

FELICIAN CREDO SIMWELAPLAINTIFF

VERSUS

ABDILLAH AHAMED YUSUF1ST DEFENDANT

EMPIEN COMPANY LIMITED.....2ND DEFENDANT

SALUM SUMRY.....3RD DEFENDANT

BENARD KATATA.....4TH DEFENDANT

PAKRINE NGWEGWE.....5TH DEFENDANT

SABAS MWISUA.....6TH DEFENDANT

FREDRICK KAFULAMA.....7TH DEFENDANT

JOHN MWENDASILA SINYORI 8TH DEFENDANT

GERALD ULAYA KABONGE.....9TH DEFENDANT

STANLAUS NKWENDE.....10TH DEFENDANT

LAHILAGILA KANIKI.....11TH DEFENDANT

LUNEULA LUSHU.....12TH DEFENDANT

SENI MASHANGA 13TH DEFENDANT

REVOCATUS LUNGWA 14TH DEFENDANT

Date of last Order: 29/03/2021

Date of Ruling: 10/05/2021

RULING

C.P. MKEHA, J

The Plaintiff has asked leave of the court to withdraw the present suit. According to the plaintiff, the 2nd defendant Company is undergoing liquidation and that the 7th and 14th defendants are now dead. The plaintiff is

no longer interested in suing legal representatives of the defendants who have passed on. Again, according to the plaintiff, he has already sorted out his differences with the 8th and 12th defendants out of court. The plaintiff adds that, following liquidation of the 2nd defendant company, he (the plaintiff) no longer wishes to sue the first defendant. As such, the plaintiff prays to withdraw the suit against the 1st, 2nd, 7th, 8th, 12th and 14th defendants without leave to refile the same against the said parties.

On the other hand, the plaintiff prays to withdraw the suit with leave of refiling the same against the 3rd, 4th, 5th, 6th, 9th, 10th, 11th, and 13th defendants. In the intended suit the plaintiff prays for leave to join the liquidator of the 2nd defendant's company instead of the 2nd defendant who is no longer capable of being sued. It is the plaintiff's prayer that an order of refiling the suit against the 3rd, 4th, 5th, 6th, 9th, 10th, 11th, and 13th defendants be accompanied with an order exempting court fees to all the parties except the liquidator, as it was allowed by his Lordship (Mrango,J) as he then was, in this court's ruling dated 11/04/2019.

Mr. Kamyalile learned advocate for the 4th to 14th defendants has no objection to the prayer of withdrawing the suit against the 7th, 8th, 12th, and 14th defendants without leave of refiling the same. The learned advocate does not either object withdrawal of the suit against the 4th, 5th, 6th, 9th, 10th, 11th, and 13th, defendants with leave of refiling the same. The learned advocate merely

asks for costs of the present suit in favour of the 4th, 5th, 6th, 9th, 10th, 11th and 13th defendants.

Ms. Tumaini Amenye learned advocate for the first defendant does not object withdrawal of the suit against her client without leave of refiling the same. The learned advocate merely asks for costs in favour of her client.

The plaintiff rejoins by asking the court to waive costs of the 8th and 12th defendants with whom he settled the matter out of court. The plaintiff asks waiver of costs in respect of the 7th and 14th defendants who passed on because of the fact that, he had a genuine case against them only that they are no longer alive. The plaintiff further asks the court to waive costs in respect of the 1st defendant whose presence in the intended suit is affected by the 2nd defendant's liquidation.

In terms of Order XXIII Rule 1(1) of the Civil Procedure Code, at any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim. The only issue is whether the plaintiff should be allowed to do so without costs in the circumstances of this case. The learned advocates for the 1st and 4th to 14th defendants have not objected withdrawal of the suit be it with leave to refile the same or without it. They have merely pressed for costs of the present suit.

Mr. Kamyalile learned advocate is willing to waive costs in respect of the 7th, 8th, 12th and 14th defendants. The plaintiff had nothing to submit in respect of

costs to the 4th, 5th, 6th, 9th, 10th, 11th and 13th defendants. The fact that the plaintiff's intended suit would not be affected in the absence of the 1st defendant, as per the plaintiff's own submissions, is, a prima facie evidence that the plaintiff dragged the first defendant into this case without justifiable reasons.

From the foregoing, I grant the plaintiff's prayer for withdrawal of the present suit against the 1st, 2nd, 7th, 8th, 12th, and 14th defendants without leave of refiling the same against the said defendants or their legal representatives. I either grant the plaintiff's prayer for withdrawal of the suit against the 3rd, 4th, 5th, 6th, 9th, 10th, 11th and 13th defendants with leave of refiling the same subject to the law of limitation as per Order XXIII Rule 2 of the Civil Procedure Code. I also grant the plaintiff's prayer for joining the 2nd defendant's liquidator in the intended suit in lieu of the 2nd defendant who is no longer capable of being sued. The plaintiff is condemned to pay costs of the present suit to the 1st, 4th, 5th, 6th, 9th, 10th, 11th and 13th defendants. An order for waiver of court fees contained in this court's ruling dated 11/04/2019 to remain in force. It is so ordered.

Dated at **SUMBAWANGA** 10th day of May, 2021.




C.P. MKEHA

JUDGE

10/05/2021

Court: Ruling is delivered in the presence of the plaintiff in person, Mr. Kamyalile learned advocate for the 4th to 14th defendants and Ms. Tumaini learned advocate for the 1st defendant.



C.P. MKEHA
C.P. MKEHA

JUDGE

10/05/202