

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**LAND DIVISION
AT DAR ES SALAAM**

LAND CASE NO. 230 OF 2013

ABDUL MWINYIHAMISI.....1ST PLAINTIFF
ZAKARIA MWINJUMA DIGOSI.....2ND PLAINTIFF
**ADINANI S. SABUNI T/A USAMBARA LINE
TRANSPORTER..... 3RD PLAINTIFF**
**REV. BRUNO MWAKIBORWA T/A
MITO YA BARAKA.....4TH PLAINTIFF**
KHAMIS SALUM.....5TH PLAINTIFF
JOSHUA K MATIMO.....6TH PLAINTIFF
YASIR HUMUD.....7TH PLAINTIFF
SALUM ATHUMANI.....8TH PLAINTIFF
RAMADHANI NAJIM.....9TH PLAINTIFF
MOHAMED SALIM.....10TH PLAINTIFF
**AND AHMED ABDALLAH RIYAMI appearing for themselves
and in representative Capacity for 504 others.....11TH PLAINTIFF**

VERSUS

THE DAR ES SALAAM CITY COUNCIL

(Former Ilala Municipal Council).....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

RULING

OPIYO, J.

The counsel for plaintiff, one Mr. Barnaba Lugua prayed to withdraw the suit on the ground that the dispute which was pending in this court has already

gotten a solution as valuation process for his compensation has already started by Government Institution TANOARDS and TARURA as per the letter he filed in court on 16/11/2021. He submitted that the process has started in Kinondoni and Mchikichini areas. In their place, it has been dragged because of pendency of this case. The institutions can not work on disputed properties. He therefore prayed to withdraw the suit to enable evaluation process to pick up at the disputed area as well.

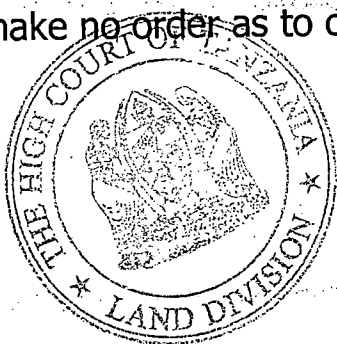
Ms Twaraha Jumbe, representing the first defendant and also holding brief for the second Ayoub Sanga, state Attorney for the second defendant objected the move arguing that they are not aware of any exercise to that effect and as there was a preliminary objection that was awaiting decision, let the same be determined first before move to withdraw the suit is considered.

Mr. Lugua was quick to rejoin by reiterating his prayer for withdrawal and stating that withdrawal of the suit is not in any way pre-empting the preliminary objection that was previously raised by the defendants if that is Ms. Jumbe's fear. The intention of withdrawal is the same with the outcome of the preliminary objection raised which is to remove this suit from the court record.

I have heard and considered the submission by both counsels. The prayer is made under order XXIII Rule 1 of the Civil Procedure Code. The effect of prayer under the above provision of law without prayer for leave to re-file has the effect of removing the dispute permanently from the court records in that the plaintiff is barred from approaching court in future over the same matter. This is in no way have the effect of preempting preliminary objection

having the effect of striking out the suit, like the ones in question which mainly challenged the competence of the amended pleadings. The feeling would be different if the plaintiff's aim was to come back to court through a back door after making good the matter leading to the objections. But in this case the plaintiffs intend to keep away from the court totally over the matter by pegging their objection under the provision above quoted.

Reading order XXIII Rule 1 of the Civil Procedure Code keenly it is observed that plaintiff is at liberty to make such prayer at any stage of the proceedings. I do not think, the pendency of the undetermined points of objection will successfully stand on the way of the plaintiff who is no longer willing to proceed with the suit in terms of the above provision as insinuated by Ms. Jumbe. With such observation I find no justification withholding determining of the payer for withdrawal of the suit. As a result, the suit is hereby marked withdrawn with no liberty to refile as the same was not prayed for. I also make no order as to costs as it was not pressed for by the defendants.



A handwritten signature in black ink, appearing to read "M.P. Opiyo", written over a horizontal line.

M.P. OPIYO,

JUDGE

18/11/2021