

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE No. 155 OF 2020**

**GLORY GERESONI KIZINGA ----- PLAINTIFF**

**Versus**

**1. JOHN CHULLA CONSTANTINO**

**2. MESAUSY BETES CHENGULA**

**3. AMANA BANK LIMITED**

**4. AHADI COMPANY LIMITED &**

**5. CHRISTOPHER MICHAEL KADEO**

**----- DEFENDANTS**

**RULING**

25.10.2021 & 25.10.2021

F.H. Mtulya, J.:

On 23<sup>rd</sup> September, 2020 Ms. Glory Geresoni Kizinga (the plaintiff) preferred **Land Case No. 155 of 2020** (the case) in this court claiming that a matrimonial property situated at **Plot No. 41 Block A** with **CT No. 37261** located at **Yombo Vituka, Temeke Dar Es Salaam** (the land) was sold without any legal justification. In explaining her claims, she drafted paragraph 7 and 8 (VI) of the plaint to display lack of consent and right to be heard during mortgaging of the land which was jointly acquired by herself and her husband, Mr. John Chulla Constantino. Today afternoon, the suit was scheduled for hearing in land cases special session. However, the plaintiff decided to invite, Mr. Emmanuel Gikaro, learned

counsel, to pray for withdraw of the case and register relevant materials to persuade this court to decide in favour of the plaintiff. Mr. Gikaro, on his part, registered a total of five (5) reasons largely based on defects which are displayed in the plaint and submitted that the plaint cannot be allowed to stay on record in favour of proper proceedings. When he was given the floor to of this court substantiate the claims, Mr. Gikaro cited Order XXIII Rule 1, 2 and 3 of the **Civil Procedure Code** [Cap. 33 R.E. 2019] (the Code) contending that the prayer is allowed in civil suits and the defects have merit to render the plaint a nullity. Finally, Mr. Gikaro prayed for leave of this court to refile the suit.

However, the prayer was not received well by Mr. Sylvester Sebastian, learned counsel for the Mr. Christopher Michael Kadeo (the Fifth Defendant) and Ms. Angel Mwesiga, learned counsel for Amana Bank Limited & Ahadi Company Limited (the Third & Fourth Defendants) who jointly submitted that there are several reasons of refusal of the prayers registered by Mr. Gikaro. In stating the reasons for refusal of the prayers, the dual stated that: first, the reasons registered by Mr. Gikaro have no any merit whatsoever, as they are reflected in the plaint save for the wrong presentation of the matters in this court; second, the plaintiff is employing delay tactics and techniques to further stay in the disputed land, as this is

the second time she is filing land suits and prays to withdraw. To substantiate the claim of several suits, she dual mentioned a decision in **Civil Case No. 156 of 2016** which was filed and withdrawn in this court in 2016; and thirdly, if this court is convinced on the grounds of withdrawal, it must consider the counter claim of the fifth defendant as the plaint against the plaintiff and the case must proceed as per Order VIII Rule 9 (2) of the Code for the plaintiff to reply the matters raised against her.

I have gone through the provisions in Order VIII Rule 9 (2) and XXIII Rule 1, 2, and 3 of the Code. Order XXIII Rule 1 (1) of the Code permits withdraw of suits by plaintiffs at any stage of the proceedings. The only proviso enacted in the Rule is on production of sufficient reasons. On the other hand, Order VIII Rule 9 (2) of the Code shows that a counter claim in a suit must be treated as a cross suit and the written statement of defence is considered to have the same effect as a plaint.

In the present suit, when Mr. Gikaro was asked to reply the three complaints levelled against the plaintiff and the provisions in Order VIII Rule 9(2) & Order XXIII Rule (1) (a) of the Code, he briefly stated that: first, the reasons in favour of withdraw of the case are valid and may be positively considered; second, the

matrimonial house was sold while the plaintiff was in the house and the case was not yet determined to the finality to identify who has right on the land; and third, he argued that when the plaint is withdrawn, the counter claim itself cannot stand as it solely depends on the plaint. Finally, Mr. Gikaro reminded this court that speed is good in determination of cases but justice is better.

On my part I need not be detained in resolving the present dispute as the law in the Code under Order XXIII Rule 1 (1) permits withdraw of the suits at any stage of proceeding. The only test is on the production of relevant materials to persuade this court to decide in favour of the plaintiff. I have read the 7<sup>th</sup> and 8 (VI) paragraphs in the plaint on allegation of forgeries and paragraph 8 (VIII) on the unknown persons, and considering the five (5) defects registered by Mr. Gikaro in this court today, I think the plaintiff has discharged her duties and succeeded to persuade this court to grant her prayer on the withdraw of the suit. However this court will not grant leave to refile as land disputes are regulated by land laws and the **Law of Limitation Act** [Cap. 89 R.E. 2019], with limitation period of twelve (12) years, which are not ripe as of this year, 2021.

I understand Mr. Sebastian and Ms. Mwesiga were complaining of tricks and techniques of the plaintiff to stay longer in the disputed

land. However, my understanding tells me that any person who has interest in any of the subject matter may wish to initiate legal proceedings against any persons who intervenes or is about to intervene his interest. In any case, the plaintiff is not immune from prosecution, both civil and criminal.

Similarly, this court will not be detained with the issue of counter claim of the fifth defendant to be considered as a plaint to proceed against the plaintiff. That would be a new practice which this court is asked to set and I think, this court is not ready to do so as after the withdraw of the case, nothing remains in record to substantiate the counter claims.

Having said so I have decided to mark this suit withdrawn without any orders to costs. Reason is obvious that the suit was not determined to the finality.

Ordered accordingly.



F.H. Mtulya

**Judge**

25.10.2021

This Ruling is delivered in Chambers under the seal of this court in the presence of the plaintiff, Glory Geresoni Kizinga and her learned counsel Mr. Emmanuel Gikaro and in the presence of learned minds of Mr. Sylvester Sebastian for the fifth defendant and Ms. Angel Mwesiga for the third and fourth defendants.



  
F. H. Mtulya

**Judge**

25.10.2021