

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND CASE NO. 125 OF 2018

**ADAM MARIKI ASSEY.....1ST PLAINTIFF
ALLY HAMMAD.....2ND PLAINTIFF
ALLY RAMADHANI MASSOUD.....3RD PLAINTIFF
ALLY MASOUD ALLY.....4TH PLAINTIFF
CLEMENT MAYOMBO KIYUGA5TH PLAINTIFF
AND 39 OTHERS**

VERSUS

**THE HONOURABLE ATTORNEY GENERAL.....1ST DEFENDANT
MINISTRY OF WORKS TRANSPORT AND
COMMUNICATION.....2ND DEFENDANT**

RULING

**Date of Submission: 20/06/2022
Date of Delivery: 20/06/2022**

AMOUR.S. KHAMIS, J.

In the midst of cross examination of PW 23, ALLY ABDU SHAHER, Mr. Erigh Rumisha, learned State Attorney for the defendants, and Mr. Benitho Mandele, learned advocate for the plaintiff, were involved in a number of issues that cropped up in the case.

For the interest of justice, Mr. Benitho Mandele took leave to consult his clients, whereupon he moved the Court for leave to withdraw the suit with liberty to refile.

Mr. Erigh Rumisha readily consented to the prayer but pressed for costs of the suit, which he said, were spent by the defendants in defending the suit.

In his address to the Court, Mr. Mandele contended that the plaintiffs noticed some formal defects which if left unattended, may render the suit incompetent and thus a need to protect the ends of justice.

Order XXIII Rule 1 (i) of the **CIVIL PROCEDURE CODE, CAP 33, R.E 2019** empowers a plaintiff at any time after the institution of a suit to withdraw his suit or abandon part of the claim.

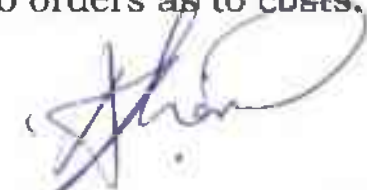
Where the Court is satisfied that a suit must fail by reason of some formal defect or for any other sufficient grounds, it may grant leave to the plaintiff to withdraw the suit or abandon part of the claim with liberty to refile a fresh suit in respect of the subject matter (see Order XXIII Rule 1 (2) (a) (b) of the Civil Procedure Code).

In the present suit, there are formal defects including non-compliance to Order VII Rule 14 (1) of the Civil Procedure Code (supra) which renders the suit incompetent in the eyes of the law.

In view of this, it is opportune for this Court to allow the plaintiffs to withdraw the suit with liberty to refile afresh in terms of Order XXIII Rule 1 (1), (2) (a) (b) of the Civil Procedure Code (supra).

Consequently, this suit is marked withdrawn with liberty to refile a fresh. I make no orders as to costs.

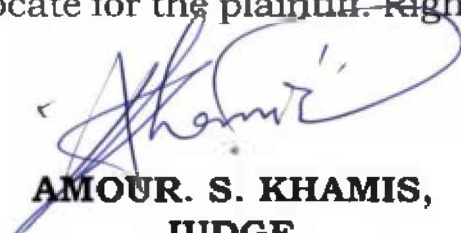
It is so ordered.



**AMOUR. S. KHAMIS,
JUDGE
20/06/2022**

Order:

Ruling delivered in chambers in presence of Mr. Erigh Rumisha and Mr. Guricha Mwanga, learned State Attorneys and Mr. Benitho Mandele, learned advocate for the plaintiff. Right of Appeal explained.



**AMOUR. S. KHAMIS,
JUDGE
20/06/2022**