

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

**AT DAR ES SALAAM
LAND CASE NO. 80 OF 2021**

**ABILLAH RASHIDI SADI
RAMADHANI RAJABU CHUMA
GEORGE PAULO PENGO & 150 OTHERS** } **PLAINTIFF**

VERSUS

**KIBAHA DISTRICT COUNCIL1ST DEFENDANT
THE ATTORNEY GENERAL.....2ND DEFENDANT**

RULING

Date of Submissions: 20/06/2022
Date of Delivery: 20/06/2022

AMOUR. S. KHAMIS, J.

Following testimony of **PW 1 ABILLAH RASHID SADI**, this Court invited parties to address it on compliance of Order VII Rule 1 (b) and Rule 14 (1) of the Civil Procedure Code, Cap 33 R.E 2019.

In giving out such invitation, the Court had in mind provisions of Order XIV Rule 2 of the Civil Procedure Code (Supra).

Mr. Bugeza Mutalemwa, learned advocate for the plaintiffs, readily conceded that the plaintiffs omitted to give particulars of the names, description and place of residence of the plaintiff as required by the law.

Mr. Mutalemwa further conceded that at the time of institution of the suit, the plaintiff omitted to produce vital documents relating to description of the plaintiff alongside the plaint.

Upon consultation with his clients, Mr. Mutalemwa prayed to withdraw the suit with leave to refile a fresh.

Ms. Debora Mcharo, learned state attorney for the defendants, did not press for costs but rather cautioned this Court that the plaintiff prayer was untenable in law.

She asserted that in view of the incompetent Plaintiff hence the whole suit, the prayer to withdraw the suit was tantamount to circumventing the omissions highlighted by the Court.

On rejoinder, Mr. Mutalemwa asserted that the weakness of the suit was pointed out by the Court and not the defendant's counsel and submitted that the issue of circumventing the deficiencies raised did not arise.

The issue is whether in the circumstances of the case, the plaintiff can withdraw the suit with leave to refile afresh.

Order XXIII Rule 1 (2) of **THE CIVIL PROCEDURE CODE, CAP 33, R.E 2019** provides that:

"1. (1) 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 the claim.

(2) Where the Court is satisfied.

(a) That the suit must fail by reason of some formal defect....."

In the present case, the Court is satisfied that on account of the defective Plaintiff, the suit must fail and thus drew attention of the parties to that effect.

Since the plaintiffs conceded to the defects pointed out by the Court, the prayer to withdraw the suit with liberty to institute a fresh suit is granted.

I make no order to costs. It is so ordered.


Hon. AMOUR S. KHAMIS, J.

20/06/2022

ORDER: Ruling delivered in chambers in presence of **Ms. Debora Mcharo, Mr. Emmanuel Mkwe** and **Mr. Peter Mundo, State Attorneys** and **Mr. Bugeza Mutalemwa**, learned advocate for the plaintiffs. Right of Appeal explained.




AMOUR S. KHAMIS, J.

20/06/2022