

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 143 OF 2022**

(Arising from the Judgment and Decree in Land Case No. 102 of 2020 High Court of  
Tanzania Land Division at Dar es salaam (Hon. Matuma, J dated 26<sup>th</sup> November,  
2021)

**WILLA ISHENGOMA.....1<sup>ST</sup> APPLICANT**  
**ALBERT ISHENGOMA.....2<sup>ND</sup> APPLICANT**  
**WILMOT ISHENGOMA.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**MAHENDA NYALIKA.....1<sup>ST</sup> RESPONDENT**  
**FAUSTINE KAZINZA.....2<sup>ND</sup> RESPONDENT**

*Date of last Order: 25/10/2022*

*Date of Ruling: 25/10/2022*

**RULING**

**I.ARUFANI, J**

The court has carefully considered the prayer made to the court by the counsel for the applicant to withdraw the application from the court with leave to refile and with no order as to costs following the concern raised by the court suo moto that the jurat of attestation of the affidavit supporting the application is defective for not showing the place where the affidavit was taken. The court has also considered the reply made thereof by the counsel for the respondents who did not object the prayer of withdrawing the application with leave to refile but is praying for the costs of the matter.

After seeing the prayer to withdraw the application with leave to refile is not objected the court has found there is no justifiable reason which can make it to desist to grant the said prayer. Coming to the prayer of costs the court has found it is true as stated by the counsel for the respondents that the respondents have been caused to incur costs of appearing in the court in the present application and they have engaged an advocate who is representing them in the matter and as the matter was coming for hearing today it is possible that they have done some research in the course of preparing themselves for hearing of the application. Under that circumstances the respondents cannot be punished for the mistake done by the counsel for the applicants in bringing to the court a defective application.

However, after seeing the point or reason caused the application to be withdrawn was raised by the court suo moto and the matter has been withdrawn at the earliest stage which as rightly stated by the counsel for the applicants is before hearing of the application, the court has found it is not proper for the applicant to be paid the full costs they have incurred in the matter.

In view thereof the court has found it is proper for the interest of justice to both sides to grant the respondents half of the costs of the matter which will be taxed by the taxing master as required by law. In the

premises the application is marked withdrawn with leave to refile and the respondents are granted half of the costs of the matter as will be taxed by the taxing master. It is so ordered.

Dated at Dar es Salaam this 25<sup>th</sup> day of October, 2022.

  
I. Arufani

**JUDGE**

25/10/2022

**Court:**

Ruling delivered today 25<sup>th</sup> day of October, 2022 in the presence of Mr. Charles Tumaini, counsel for the applicants and in the presence of Ms. Batlida Mally, counsel for the respondent. Right of appeal to the court of Appeal is fully explained.



  
I. Arufani

**JUDGE**

25/10/2022