

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

LAND CASE NO. 261 OF 2017

**REHEMA NDOJE.....1ST PLAINTIFF
JOHN BEDSON NDOJE.....2ND PLAINTIFF**

VERSUS

**KCB BANK TANZANIA LIMITED.....1ST DEFENDANT
YONO AUCTION MART & CO. LIMITED.....2ND DEFENDANT**

Date of the Ruling 01/12/2020

Date of the last Order 07/10/2020

RULING

I. MAIGE, J.

- 1) This matter was coming for hearing today. The Plaintiffs appeared through Zidadi Mikidadi, learned advocate and the Defendants through Lilian Mbene, advocate.
- 2) Mr. Zidadi prayed to withdraw the suit with leave to refile. The reason assigned being that, the purchaser, who is a necessary party in this case, has not been joined.
- 3) Miss Lilian did not object to the application save that she prayed for costs of defending the matter ~~which~~ has been here for quite a long time.

4) I have considered the submissions. I am satisfied with the reason for withdrawal of the suit with a liberty to refile. The facts in pleadings imply that the suit property has been sold to a third party. I agree with Mr. Zidadi, the purchaser is a necessary party without whom no decree capable of being executed can be issued.

5) The Counsel for the Defendants prayed for costs. I do not think that her client is entitled. I have two reasons. First, while the first Defendant admits in WSD that the suit property has been sold to a third party, he has, for the reason better known to herself, not disclosed the name of the purchaser. Two, this suit is here for more than three years and the Defendant has not raised the issue.

6) For the foregoing reasons therefore, I will grant the prayer without costs. As a result, the suit is hereby marked withdrawn with a liberty to refile without an order as to costs.




I. Maige

JUDGE

01/12/2020