

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

LAND CASE NO. 75 OF 2017

SAMEER MOHAMED.....PLAINTIFF

VERSUS

**SOPHIA BAKARI IMONJE1ST DEFENDANT
JACKSON BARIKIEL ULITU2ND DEFENDANT
SAMI GEORGE MAHENGE3RD DEFENDANT
WAKUBEMBA BAKARI BUSOLO4TH DEFENDANT
BAKARI ATHUMAN NDOLWA5TH DEFENDANT
MARIAM KONDO MAHENGE6TH DEFENDANT
SELEMANI KONDO MAHENGE7TH DEFENDANT**

R U L I N G

When, by all standards the backlog case was called on today for hearing, but having noted some defects therein, under O. XXIII Rule 1(2) (b) of the Civil Procedure Code Cap. 33 R. E. 2019 (the Code). Ms. W. Lema, learned counsel for the plaintiff prayed to withdraw it with liberty to refile without costs.

Mr. Edwin Msigwa, learned counsel for the 6th and 7th defendants had no objection but he submitted that the best option should have been the court dismissing the case much as the plaintiff had all reasons to have noticed the defects long long ago (4 years now). We shall ask for costs because the same follow events the learned.

With the provisions of Order XXIII Rule 1(2) (b) of the Code the issue is no longer whether or not the case has to be withdrawn given all the obtaining circumstances more so it is the issue of costs. It is trite law that unless there were peculiar circumstances worth to be recorded by any reasonable tribunal, which is not the case here, in civil litigation costs follow events). I would increasing holding that the rationale behind courts granting costs is that no party shall, for whatever reasons wrongly be brought to court therefore, a party, at whose instance one was wrongly prosecuted he shall, in terms of costs incurred be liable to indemnify the other so much so that end of the day the latter was put in a position he would have been had he not been brought to court. In the upshot, with leave to refile the case is as marked withdrawn as it was prayed by Ms. W. Lema, learned counsel. Case shall be reinstated only subject to the law of limitation. The defendants shall have the costs.

It is so ordered.




S. M. RUMANYIKA
JUDGE
25/11/2020