

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 102 OF 2022

BAHATI IBRAHIM (As Administratrix of the Estate of the Late Hadija Mohamed) PLAINTIFF

VERSUS

NAFISA MOHAMED (As Administratrix of the estate of the Late Jamila Mursal) DEFENDANT

RULING

15.08.2022 & 22.08.2022

N.R. MWASEBA, J.

The applicant herein is seeking for an interim injunction restraining the respondent herein to sell the disputed property located at Plot No. 24, Block "H" Kikuyu Street, within Arusha City in Arusha Region, pending a hearing and final determination of the Land Case No. 40 of 2022.

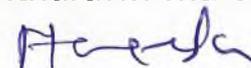
In this application Mr Reginald Rogati Lasway, learned advocate represented the applicant whereas Mr Alex Yunga, learned counsel appeared for the respondent.



When the application was called for mention on 15.08.2022, Mr Lasway prayed to withdraw the application with leave to refile because their application for interim injunction aimed at restricting the sale of the house but they have noticed it has already been sold. Thus, their application has been overtaken by event. He further averred that the parties are intending to settle the matter since they are family members.

In his reply, Mr Yunga told the court that this application needs to be withdrawn with costs because the applicant brought it to obstruct the administrator to perform his duties hence, he caused him to incur costs to hire an advocate. More to that, they have never intended to settle the matter as alleged by the counsel for the applicant. Their intention of re filing the matter means they will still obstruct the administrator. He further submitted that this application is intended to hinder other beneficiaries from enjoying their shares.

In brief rejoinder, the counsel for the applicant insisted his prayer that the application be withdrawn with no order as to costs. As for the beneficiaries, they had already received their shares so they are not disturbing anyone. And when this application was filed, they were not aware that the house had already been sold. As they are still negotiating the matter, they prayed for the application to be withdrawn without costs.

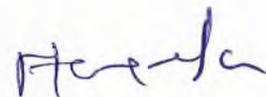


Having gone through the submissions of both learned counsels, the issue for determination is whether the application is to be withdrawn with costs or not.

The act of the applicant herein praying to withdraw her case with leave to refile by the court does not waive his obligation to pay costs unless there is a sufficient reason that the court finds it not proper to grant. The only reason for withdrawing the application is that it has been overtaken by event as the intended house has already been sold. The applicant has noticed it after being served by the counter affidavit. That means he instituted this matter without being sure as to the status of the house in dispute. I agree with the counsel for the respondent that although the matter is withdrawn at the earliest stage, the fact that the respondent has already filed counter affidavit, engaged an advocate and appeared before the court for some days that alone suffice to prove that the respondent incurred costs of which there is a need to be compensated by the applicant.

This was also a position in the case of **The Registered Trustees of Moravian Church in Southern Tanzania Vs Tanzania Zambia Railways Authority and 3 Others**, (Misc. Land Application 15 of 2021)

[2021] TZHC 3602 (18 May 2021) (Tanzilii) that:



"Generally, for all what the Respondents' Counsels have done, they deserve to be awarded costs. Even if the Applicant had not intended this to happen as alleged by her Counsel, the fact that she is one who instituted the application there is no way she can waive the costs liability."

That being said and done, the application is hereby withdrawn with leave to refile. The applicant to bear the costs.

Ordered accordingly.

DATED at **ARUSHA** this 22nd day of August 2022.



N.R. Mwaseba
N.R. MWASEBA

JUDGE

22/08/2022