

TANZANIA / JUDGMENT

hadija bakari jumanne vs iscon commodities t ltd another 2023 tzhc 20531 24 august 2023

COURT
TZHCDECIDED
24 August 2023

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IN THE HIGH COURT OF TANZANIA (MTWARA DISTRICT REGISTRY) . ATMTWARA MISO. CIVIL APPLICATION NO.S OF 2023 (Originating from Execution Case No.1 of 2023) HADIJA BAKARI JUMAIMNE..... ..APPLICANT VERSUS ISCON COMMODITIES (T) LTD.....1st RESPONDENT ABDUL AHMAD LILA.....2nd RESPONDENT ORDER 24/8/2023 LALTAIKA, J. Upon convening for today's mention of this matter, the applicant was duly represented by Ms. Annastazla Minja and Radhia Abda Hah Luhuna, both learned counsel, while simultaneously, Ms. Luhuna appeared on behalf of Mr. Hussein Mtembwa, learned counsel representing the respondents. Before proceeding further, Ms. Minja brought to the attention of the court that Ms. Luhuna sought to address the court. Subsequently, Ms. Luhuna assumed the floor and: conveyed that upon reviewing the court file, it had come to their attention that the application was premature. Emphasizing this aspect, the learned counsel highlighted that the legal Page 1 of 3 provisions invoked for the application necessitate the inclusion of an order from the lower court as a prerequisite for property attachment. Nonetheless/ Ms. Luhuna maintained that the application had been filed with the intention of seeking attachment, and she further underscored that the requisite court order had not yet been issued. With this consideration, the learned counsel prayed for the withdrawal of the application, coupled with the opportunity to refile should the order for attachment be subsequently procured pertaining to the same property. Additionally, Ms. Luhuna affirmed that consultations had taken place with the opposing party and Mr. Mtembwa, revealing his non objection to this course of action. It was clarified that both parties had jointly presented this request before the Hon. Deputy Registrar, who, however, did not grant approval. Having considered the submission by the learned counsel representing the applicant, it is fundamental to acknowledge that a party maintains the prerogative to withdraw a suit or application at any juncture prior to the issuance of a judgement or ruling. This aligns with the renowned assertion in Mulla's writings that no entity should be compelled to pursue relief that they do not wish to benefit from. Such a course of action serves not only the efficiency of the court's operations but also the precision of court orders and records. Consequently, in accordance with the applicant's entreaty, I hereby designate MISC. CIVIL APPLICATION NO, 8 OF 2023 as withdrawn on Page 2 of 3 the grounds of

prematurity, with the opportunity granted for refileing. Furthermore, each party shall bear their respective costs. Thus, it is ordered. 24.08.2023 Page 3 of 3

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