

TANZANIA / JUDGMENT

Land Case No

COURT
TANZLIIDECIDED
1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LAND DIVISION AT DAR-ES-SALAAM LAND CASE NO 4069 OF 2024 OMARY RASHID ALLY.....
PLAINTIFF VERSUS 1 STANBIC BANK TANZANIA LIMITED..... st DEFENDANT BILLO
STAR DEBT COLLECTORS CO. LIMITED....2nd DEFENDANT

RULING

Date of last Order: 20/08/2024 Date of Ruling: 20/08/2024 LA LTAl KA, J, The plaintiff herein OMARY RASHID ALLY instituted this suit against STANBIC BANK TANZANIA LIMITED and BILLO STAR DEBT COLLECTORS CO. LIMITED (the 1st and 2nd Defendants respectively) seeking the following orders:

- (a) Declaratory order against the 1st and 2nd Defendants that the process of disposing the collateral located at MBWENI MALINDI AREA PLOT NO 117 BLOCK with Title No. 79271 is illegal and against the loan facility letter granted to the plaintiff.
- (b) Payment of the sum of Tshs One hundred Million (20,00,000,00) (Sic!) being General and Punitive damages. Page 1 of 6
- (c) Costs of this suit
- (d) Any other relief(s) this Honourable Court may deem fit and expedient to grant. As required by our procedural law, the Defendants filed their Written Statement of Defence (WSD) on time. They also raised a counter claim. As will be clearer later, the latter (the counterclaim) is what prompted me to pen down this ruling. When the suit was called for mention earlier today, the Plaintiff appeared through Mr. Hekima Mwasipu, learned Advocate. The Respondents, on the other hand, enjoyed the legal services of Mr. Mudhihir Magee, learned Advocate. Mr. Mwasipu was quick to inform the court that although the matter was scheduled for mention, negotiations that had taken place, necessitated a prayer to withdraw the suit without costs. In response, Mr. Mudhihir Magee, counsel for the defendants, stated that he had no objection to the withdrawal of the case but requested costs. He argued that the defendants had incurred costs related to entering an appearance and noted that they had filed a counterclaim. He mentioned that he had only just learned about the withdrawal of the Page 2 of 6 suit and requested a short adjournment to allow him time to withdraw the counterclaim as well. Mr. Mwasipu then suggested that the issue of costs be postponed until

the counterclaim was withdrawn. It became clear from the discussion that counsel for the defendants was not kept in the loop on the stage reached in the negotiation. In that regard, it was also unlikely that he would be accorded support to prosecute the counterclaim if plaintiff and defendants had settled the matter. Counsel for both parties agreed to withdrawal both the suit and the counter claim. I am inclined to state the obvious, albeit in passing, as I expound on three issues that have emerged in this discussion (i) plaintiff's right to withdraw suit at any stage before decision (ii) the need for counsel to share information and exhibit professional courtesy (iii) counsel-centricity as opposed to client-centricity in litigation. One of the fundamental principles of civil litigation is that the plaintiff, being the party who initiates the legal proceedings, retains the autonomy to decide whether to proceed with or discontinue the action. This autonomy is grounded in the idea that the plaintiff, who is often the party claiming a right or seeking a remedy, should have the freedom to assess the merits of their case and make decisions accordingly. Page 3 of 6 The CPC acknowledges this by allowing the plaintiff to withdraw the suit at any time, recognizing that various factors, such as settlement, realization of a weak case, or a desire to avoid further legal costs, may prompt a plaintiff to discontinue the litigation. See Order XXIII of the CPC RE 2019. The authoritative commentary by Mulla, *The Code of Civil Procedure*, Lexis Nexis is often referred to where the learned authors state the rationale for this allowance as courts not being in the position to force a right that is not needed. If I may add, allowing plaintiffs to withdraw suits contributes to judicial efficiency by enabling the discontinuation of cases that may not have merit or that the parties no longer wish to pursue. This helps to unclog the judicial system by removing cases that are no longer contested, thereby allowing the courts to focus on cases that genuinely require adjudication. Moreover, the right to withdraw without necessarily facing adverse consequences encourages plaintiffs to reconsider continuing with weak or untenable cases, thereby reducing the likelihood of frivolous litigation. On the second issue, it is important to remind ourselves that when lawyers work together and keep each other informed, it helps to avoid Page 4 of 6 unnecessary delays and disruptions in the court process. For instance, if the opposing counsel is informed of an upcoming withdrawal, they can prepare accordingly, perhaps by also deciding to withdraw a counterclaim or by settling any remaining issues out of court. This cooperation reduces the likelihood of adjournments and ensures that the court's time is used efficiently. Conversely, surprising the other party can lead to requests for adjournments, procedural objections, and a general slowing down of the case, all of which waste judicial resources. On the third issue, as correctly argued by counsel for the Defendants, withdrawal of a suit does not automatically lead to withdrawal of a counterclaim. A counterclaim is a procedural tool in civil proceedings that allows a defendant to assert his or her own claim against the plaintiff. It essentially serves as a suit within a suit, (akin to the trial within a trial in criminal cases.) It enables the defendant to bring a claim that he/she believes they have against the plaintiff, arising out of the same transaction or occurrence that is the subject of the plaintiff's claim. Without prejudice to the above, client-centricity as opposed to counsel-centricity in civil litigation requires counsel to conduct their business as per the dictates of their clients and not that of their own desire.

That is why counsel are shielded from bearing the cost on their own accord unless Page 5 of 6 specifically stated to the contrary. The concurrent decision by counsel in the matter at hand to withdraw the suit in its entirety is a move to the right direction. In the upshot, this suit is hereby marked withdrawn. Each party to bear their own costs. It is so ordered. E. I. LA LTAl KA, JUDGE 20/08/2024 Ruling delivered under my hand and the seal of this court this 20th day of August 2024 in the presence of Mr. Hekima Mwasipu, learned Advocate for the Plaintiff and Mr. Mudhihir Magee, learned Advocate for the Defendants. E. I. LA LTAl KA, JUDGE 20/08/2024 Page 6 of 6

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