IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 201/18 OF 2020

1. TANZANIA SOCIAL ACTION FUND
2. THE PERMANENT SECRETARY PRESIDENT'S OFFICE ..... **APPLICANT**

VERSUS

LUDOVICKA L. S. TARIMO ..... **RESPONDENT**

(Application for extension of time to lodge an appeal against the judgment and decree of the High Court of Tanzania at Dar es Salaam)

(Mashaka, J.)

Dated the 13th day of December, 2017
in
Revision No. 217 of 2017

RULING

29th March & 22nd April, 2021

KITUSI, J.A.:

Mr. Godwin Nyaisa, learned advocate for the respondent has objected to the prayer by Ms. Deborah Mcharo, learned State Attorney for the applicants to withdraw this application. Mr. Nyaisa's reason for the objection is that a Notice of Preliminary Objection, hereafter the preliminary objection was raised by the respondent prior to the notice of withdrawal, and that preliminary objection was challenging the competence of the application. Mr. Nyaisa's argument is that one cannot withdraw an incompetent application.

Citing our recent decision in **Meet Singh Bhachu v. Gurmit Singh Bhachu**, Civil Application No. 144/02 of 2018 (unreported) Mr. Nyaisa

submitted that the best that can be done by the applicant under the circumstances is to concede to the preliminary objection and allow for the matter to be struck out with costs.

In a short rejoinder Ms. Mcharo conceded to the preliminary objection but prayed that the applicant be spared from costs.

In the course of preparing this ruling I had to recall the parties to address me on whether or not the notice of preliminary objection complied with Rule 107 (3) of the Rules which requires the party raising a preliminary objection to provide particulars. At the resumed hearing the same learned counsel argued for their respective parties. Mr. Nyaisa submitted that the Notice is elaborate enough because it mentions that the application is untainable under Rule 90(1) of the Rules. In addition, the respondent filed written submissions as far back as August 2020 detailing the objection.

On the other hand, Ms. Mcharo submitted for the applicants that mention of Rule 90 (1) of the Rules is not sufficient disclosure of details because that rule involves many things.

First of all, the prayer for withdrawal of the application is granted. The application is accordingly marked withdrawn under Rule 58 (3) of the Rules. Secondly the issue of costs is also resolved in favour of the

respondent. It is ordered that the respondent shall have the costs because he had filed a notice of preliminary objection since August 2020 yet the applicants did not take any immediate step until March, 2021.

Thus, the application is withdrawn with costs.

DATED at **DAR ES SALAAM** this 20th day of April, 2021.

I. P. KITUSI
JUSTICE OF APPEAL

Ruling delivered this 22nd day of April, 2021 in the presence of Ms. Grace Lupondo, learned State Attorney for the Applicants and in the absence of the Respondent, is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL