

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT ARUSHA**

CIVIL REFERENCE NO. 5 OF 2017

*(Originating from District Land and Housing Tribunal No. 11/2008 and Application No. 457/2016
District Land and Housing Tribunal of Arusha)*

JONAS A. SWAI.....APPLICANT

VERSUS

JOSEPH JUMA SHIRIMA.....RESPONDENT

RULING

Date of last Order: 02/08/2018

Date of Ruling: 06/08/2018

BEFORE: S.C. MOSHI JUDGE

The Application is brought under Rule 7(1) (2) (3) and (4) of the Advocates Remuneration Order, G.N. No. 264 of 2015. The applicant prays that the decision of the Taxing Officer/Chairman which struck out Taxation Cause No. 457 of 2016 be quashed and set aside and this Court be pleased to order Taxation Cause No. 457 of 2016 to be determined on merits. He also requested for costs to be paid by the respondent.


The Applicant was represented by Mr. John Materu, Advocate and Mr. Ombeni Kimaro, Advocate whereas the Respondent appeared in person.

However, before the application was heard, the respondent filed a Notice of Preliminary Objection on point of law (P.O) to the effect that the application is filed out of time.

The Court ordered the parties to argue both the Preliminary Objection and the application together. The applicant filed his submission in support of the application as ordered. However the respondent did not file the submission as scheduled.

I therefore have applicant's submission only. I have considered the submissions. It is evident that the Taxing Officer raised the issue of jurisdiction suo mottu without affording the parties the right to be heard on the raised point; this is revealed in the Ruling of the Tribunal. I agree with Mr. Materu that the omission is fatal and it occasioned miscarriage of justice to the applicant. See the cases of **Deo Shirima & Others Vs Scandinavian Express Service Ltd** (2009) EA 127 and **MBEYA – RUKWA AUTO PARTS AND TRANSPORT LTD Vs JESTINA GEORGE MWAKYOMA [2003] T.L.R 251.**

That said, I grant the application by quashing the decision in Taxation Cause No. 457 of 2016 and setting aside any order that is made therefrom. I order that Taxation Cause No. 457/2016 should be heard on merits.


S.C. MOSHI
JUDGE
06/08/2018