

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

CIVIL REFERENCE NO. 08 OF 2017

(Arising from the decision of the TAXING MASTER in Miscellaneous Civil Application No. 226 of 2016 as Hon. Rumisha)

CHARLES MARCO NAIBALAAPPLICANT

VERSUS

THOMAS MARCO NAIBALA RESPONDENT

MAIGE, J

RULING

1. This is an application for reference against the decision of the taxing master striking out an application for setting aside a dismissal order for the reason of being preferred under a wrong provision of law.
2. The application was brought under order 9 rule 9(1) of the CPC . The counsel for the respondent raised a preliminary objection that it was not the proper application and submitted so in his submissions. In

rebutting the contention, the counsel for the applicant cited the authority of this Court in **ZANZIBAR TELOCOM COMPANY VS. HAIDARY Y. RASHID T/A MARARISA ENTERPRISES** in support of the proposition that order 9 rule 9(1) of the CPC was the relevant enabling provision for setting aside a dismissal order by the taxing master.


3. Notwithstanding the authority of this Court which was binding to him, the taxing master held that the provision was not applicable and therefore struck out the application.

4. In his factual deposition in paragraph 8 of the affidavit, the applicant thinks that the honourable taxing master was not correct. In his humble opinion, the taxing master was bound by the decision of the High Court. In his submissions, Mr. Daudi has again referred the same authority. I have read the authority and I agree with him that it was materially similar with the legal issue that the taxing master was resolving. In view of the principle of precedent which applies in our jurisdiction he ought to have adhered to the authority.


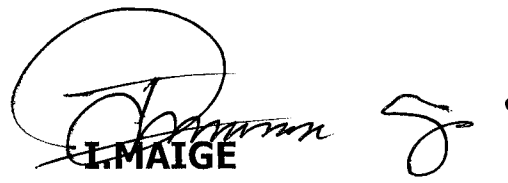
5. For those reason therefore I find that this application has merit. Accordingly therefore, the decision of the taxing master is hereby set

aside. The application should be heard on merit by a different taxing master.

It is so ordered.


I. MAIGE
JUDGE
26/10/2018

Court: Ruling delivered, application granted.



I. MAIGE
JUDGE
26/10/2018