

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REFERENCE NO. 8 OF 2020

(Arising from High Court Bill of Costs Number 111 of 2018)

PATRICK EDWARD MOSHI.....APPLICANT

VERSUS

COMMERCIAL BANK OF AFRICARESPONDENT

Date of the ruling 4/12/2020

Date of the last order 19/10/2020

RULING

I. MAIGE, J

1. This is a reference against the decision of the Deputy Registrar dismissing an application for bill of costs for non-appearance on the part of the applicant.
2. The application was dismissed on 3rd June 2020. Soon upon the dismissal, the applicant lodged an informal application to have the dismissal order set aside and the application restored. It is suggestive in the affidavit that, when the parties appeared before the taxing officer for hearing of the informal motion for setting aside the

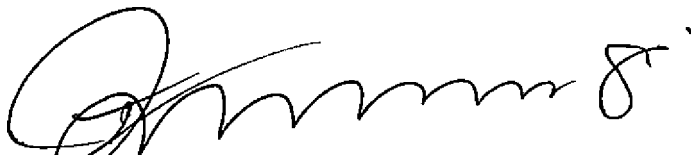
dismissal order, the taxing officer declined to exercise jurisdiction on account that he was incompetent so to do. That is what prompted the applicant to initiate this application for reference.

3. The maintainability of the application has been doubted, by way of a notice of preliminary objection for among others being premature. In the humble submissions of Mr. Jonathan Lulinga, for the respondent, the matter should have, before being challenged to the Court, been dealt with by way of an application for setting aside the dismissal order. Mr. Patrick Moshi for the applicant, does not in essence doubt this settled position of law. His concern is that, he had, before filing this application, made an informal application to have the dismissal order set aside but the deputy registrar has declined to exercise his jurisdiction.

4. The issue raised in the counsel submissions appears to be simple and cannot consume the precious time of this Court. The facts in the affidavit suggest that the deputy registrar is faulted for dismissing the application for want of appearance while in fact the applicant was

present in court on the date of dismissal. I agree with Mr. Lulinga that, such an issue cannot be dealt by reference. It should have been dealt with by way of an application for setting aside a dismissal order first.

5. On that account therefore, I strike out the application for being incompetent and remit the file to the deputy registrar for determination of the application for setting aside the dismissal order.

A handwritten signature in black ink, appearing to read 'J. Maige', with a large, stylized initial 'J'.

J. Maige

JUDGE

04/12/2020

Date: 04/12/2020

Coram: Hon. S.H. Simfukwe - DR

For the Applicant: Present in person

For the Respondent: Absent

RMA: Bukuku

COURT: Ruling delivered this 04th day of December, 2020.




S.H. Simfukwe

DEPUTY REGISTRAR

04/12/2020