IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IRINGA DISTRICT REGISTRY)

AT IRINGA

MISC. LAND APPEAL NO.10 OF 2020

*(Originating from the Judgement and Decree of the District Land and Housing Tribunal for Njombe at Njombe (**Hon. G Nhumba, Chairman**) in Land Appeal No. 14 of 2019 dated 18th May, 2020)*

BENJAMINI NKWERA .....APPELLANT

VERSUS

HURBERT A. WAYOTILE.....RESPONDENT

JUDGEMENT

Date of Last order: *18/11/2021*
Date of Judgement: *14/12/2021*

MLYAMBINA, J.

This is another area calling refreshing of basic legal principles governing appeals against decision reached ex-parte. By considering two schools of thought of the Court of Appeal, this Judgement answers the issue as to; *whether decisions reached ex- parte by the Court are appealable. If yes, who can appeal against such decisions and when?* The Judgement goes on to shed light on the interpretation of *Order IX, Rule 9 of the Civil Procedure Code, Cap 33 [R.E. 2019] and Section 70 (2) of the Civil Procedure Code (supra).* In particular, the Judgement is intended to address on; *whether the decisions reached ex-parte by the Ward Tribunal on land matters are appealable.* Before going into the detailed analysis on the pointed issues, I will consider the brief facts on the

matter, the major prayer of the Appellant and both parties' arguments in this appeal.

The Appellant was aggrieved with the ex-parte decision of the Manda Ward Tribunal in Njombe District. He never attempted to exhaust local remedies of setting aside such decision. His attempt to challenge such decision before the District Land and Housing Tribunal for Njombe at Njombe via *Land Appeal No. 14 of 2019* failed at preliminary stage. Being aggrieved, the Appellant is seeking before this Court to impeach the decision and orders of the District Land and Housing Tribunal on three grounds to *wit*:

One, the District Land and Housing Tribunal erred in law and in fact by holding that the appeal filed in the District Land and Housing Tribunal for Njombe from Manda Ward Tribunal was filed prematurely without any justification.

Two, the District Land and Housing Tribunal erred in law and in fact by holding that the Appellant ought to have filed the application in the Trial Ward Tribunal to set aside the ex-parte decision without giving any law that directs the Appellant to that re-course.

Three, the District Land and Housing Tribunal erred in law and in fact by deciding the case in favour of the Respondent by dismissing the Appeal on preliminary objection despite of the appeal being filed legally.

During the hearing, the Respondent enjoyed his legal right of representation through learned Counsel Mr. Marco Kisakali while the Appellant was unrepresented. Taking such situation into mind, this

appeal, by consent of the parties, was disposed by the way of written submissions. Both parties adhered to the schedule of the Court thereon.

In addressing the first ground of appeal, the Appellant submitted that; the Chairman of the District Land and Housing Tribunal while determining the preliminary objection raised seemed to have agreed with the Counsel for the Respondent that the appeal thereat was filed pre maturely as it can be observed at the 2nd page of its ruling, in which the Chairman observed:

> *It is true as submitted by the learned Counsel. The appeal was filed pre maturely, because the Appellant aggrieved by the ex-parte Judgement delivered by the trial Tribunal against him, the only relief was to file the application to the trial Ward Tribunal of Manda to set aside the ex-parte Judgement so that he can be given the right to be heard. [Emphasis added].*

The Appellant did not subscribe to the above position on the reason that; it is not the correct interpretation of the law. However, the Appellant submitted that; the Chairman has not shown any law that legalizes the position he had taken. It was erroneously made. The Chairman was wrongly persuaded by the decisions cited by the Respondent's Counsel including that of **James Kabayo Mapalala v. British Broadcasting Corporation** (2004) TLR 150 in which the Court held that:

> *In case where a decree is passed ex-parte against a Defendant, he may apply to the Court by which the*

decree was passed for an order to set aside the decree.

Furthermore, the Appellant submitted that; the above holding is quite clear in accordance to *the Civil Procedure Code (supra),* which allows applying to set aside the ex-parte orders. But it is quite different to the procedures that apply in the Ward Tribunal. *The Land Disputes Courts Act, Cap 216 [R.E. 2019]* does not give any remedy to an aggrieved party, to file an application to the Ward Tribunal to set aside its decision. *Section 19 of the Land Disputes Courts Act (supra)* shows clear that any person aggrieved by the decision of the Ward Tribunal may appeal to the District Land and Housing Tribunal.

Moreover, the Appellant argued that; *Section 10 (2) of the Land Disputes Courts Act (supra)* allows the use of *the Ward Tribunals Act, Cap 206 [R.E.2002]* in land matters in the Ward Tribunal should there be a *lacuna* in *the Land Disputes Courts Act (supra).* Similarly, going through *the Ward Tribunals Act (supra)*; there is no any provision that allows an aggrieved person to file an application in the Ward Tribunal to set aside its Judgement or Orders made ex-parte. In view of the Appellant, it remains the position, therefore, a person who is aggrieved by the Judgement of the Ward Tribunal has the right to file the appeal as per *Section 19 of the Land Disputes Courts Act (supra) to the District Land and Housing Tribunal.*

The Appellant contended that; as rightly directed by the Ward Tribunal that *"any aggrieved person has the right of appeal to the District Land and Housing Tribunal within 45 days"* henceforth, the Appellant filed *Land Appeal No 14 of 2019.* He added that; plain interpretation of the

law requires that once the Ward Tribunal has made its Judgement, then it becomes *functus officio.*

The Appellant collectively submitted the second and third ground of appeal by arguing that; *the Land Disputes Courts Act (supra)* and or *the Ward Tribunals Act (supra)* do not provide for a party who is aggrieved by an ex-parte Judgement of the Ward Tribunal to file an application to the Ward Tribunal for it to set aside its Judgement. He insisted that; the *Land Appeal No. 14 of 2019* filed at Njombe District Land and Housing Tribunal was properly and legally filed before it. The position taken by the Chairman in *Civil Appeal No 14 of 2019* seems much to have been influenced by *Order IX, Rule 9 of the Civil Procedure Code (supra)* which provides:

> *In any case in which the decree is passed ex-parte against a Defendant, he may apply to the Court by which the decree was passed for an order to set it aside;* and *if he satisfies the Court that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree...[Emphasis added]*

In view of the Appellant, the afore cited provision of *the Civil Procedure Code (supra)* seems to have compelled the appellate Tribunal to decide that the appeal was pre-mature without considering that *the Civil Procedure Code* does not apply in the Ward Tribunal. Therefore, the Appellant prayed that this appeal be allowed by setting aside the ruling dismissing *Land Appeal No 14 of 2019* and let the file be remitted to the

District Land and Housing Tribunal for Njombe at Njombe for the continuation of hearing of the appeal.

In his reply, Mr. Kisakali submitted that; the first appellate Tribunal was right to decide that the Appellant's appeal was pre-mature filed because the Appellant was first supposed to seek a proper remedy before trial Tribunal. If rejected, would have approached the first appellate Tribunal on appeal. The reason advanced by Counsel Kisakali was that the Appellant did not adduce any evidence which will be used to determine the case if the file will be remitted to the first appellate Tribunal.

Further, Counsel Kisakali argued that; it is illogical to accept the prayers by the Appellant that this High Court allow his appeal and return the file before the first appellate Tribunal to determine his appeal without the availability of the Appellant's evidence. Thus, the Respondent prayed before this Court to reject the appeal and direct the Appellant to go back before the trial Manda Ward Tribunal to seek proper remedy for him.

With regards to the second and third grounds of appeal, Mr. Kisakali submitted in reply that; the first appellate Tribunal was right to direct the Appellant that he was supposed to go back before trial Tribunal and pray for the right to appear and set aside ex-parte Judgement before resorting to the appeal at District Land and Housing Tribunal. Counsel Kisakali questioned as to how can the first appellate Court/Tribunal determine the appeal on merit before her without the availability of evidence from the Appellant herein.

Moreover, Counsel Kisakali argued that; whether the law governing Ward Tribunal has provision which provides for the stated remedy or

not, where there is *lacuna* in administration of justice, there are decided cases that give direction to the subordinate Courts on the way forward. Counsel Kisakali called upon the Court to note that; the claims before trial Tribunal are presented orally or by way of letter and there is no format that regulate the filing of the case at Ward Tribunal and in the same limb the Appellant can challenge the ex-parte Judgement through letter by describing the reasons for failure to enter appearance.

To shorten the story, Counsel Kisakali submitted that; the decisions of the High Court and Court of Appeal are binding the subordinate Courts automatically under the doctrine of precedent which eminent its origin under common law which are source of law in our jurisdiction under the umbrella of *Section 2 (3) of the Judicature and Application of Laws Act, Cap 354 [R. E. 2019].* The same applies to land matters. The common law on use of decided cases of the higher Court as source of law to subordinate Courts are provided in *Section 180 (1) (b) of the land Act, Cap.113 [R. E. 2019]* which provides that:

> Subject to the provisions of the Constitution and this Act, the law to be applied by the Courts in implementing, interpreting and applying this Act and determining disputes about land arising under this Act or any other written law shall be-
>
> (b) the substance of the *common law* and doctrines of equity as applied from time to time in any other countries of the commonwealth which appear to the Courts to be relevant to the circumstances of Tanzania.

Thus, Counsel Kisakali argued that; this being the case, although no provision that guide the trial Ward Tribunal to set aside the ex-parte but the practice and doctrine of *stare decisis et non quiet movere,* commonly abbreviated as the *stare decisis* meaning "*to stand by things decided*" is used as guiding procedure to the situation like in the Appellant's case.

In view of Counsel Kisakali, the Appellant ought to exhaust all remedies available in the trial Ward Tribunal before filing his appeal in the Land and Housing Tribunal of Njombe as it was the view of the Court in the case of **James Kabayo Mapalala v. British Broadcasting Cooperation** [2004] TLR 150 where it had the following to state:

> *In a case where a decree is passed ex-parte against a defendant, he may apply to the Court by which the decree was passed for an order to set aside the decree.*

To cement his submission, Counsel Kisakali invited this Court to read the case of **Pangea Minerals Limited v. Petrofuel (T) limited and Two Others**, Civil Appeal No.96 of 2015 and the case of **Jumuiya ya Wafanyakazi Tanzania v. Kiwanda Cha Uchapishaji Cha Taifa** [1988] TLR 146. Thereafter, this Court to dismiss the appeal on all grounds for want of merit with costs.

In his rejoinder, the Appellant reiterated what has been presented in his submission in chief.

In a nutshell, I should admit that this is one of the areas that disturbs many legal practitioners. It requires brainstorming and in-depth evaluation before making a clear guidance. In any event, the decisive

issue to be considered is; *whether, the ex – parte Judgement of the Ward Tribunal is appealable.* This issue is very critical because it is the one which caused the dismissal of *the Land Appeal No. 14 of 2019.*

It is the requirement of the law particular *The Ward Tribunal Act (supra)* and *the Constitution of the United Republic of Tanzania of 1977* as amended from time to time that a person cannot be punished unheard. For the fair trial, each party has to be afforded an opportunity to be heard. *Section 16 (2) (a) of the Ward Tribunal Act (supra)* provides that:

> *For the purposes of securing a just determination of a complaint, the Tribunal shall not make a decision on any complaint unless –*
>
> *(a) it has given an equal opportunity to each party to explain his part of the matter and to present his witnesses; and*

It is the findings of this Court that *Section 16 (2) (a) (supra)* accords equal opportunity to both parties before the Ward Tribunal to be heard prior their fate being determined. However, despite of such principle of fair litigation, the parties to the litigation cannot abuse such processes and if do so, the Ward Tribunals are not prohibited from entering the Judgement or Ruling in the absence of the defaulted party which is ex-parte Ruling or Judgement or Order.

Another point of interest is that; the Ward Tribunals were given powers to regulate their procedures during conducting mediation and trial. In expediting their duties, Ward Tribunal were not bound to follow the rules applied to any Court. It was in their discretion to do whatever

deemed fit so as to reach the end of justice as per *Section 15 (1) of the Ward Tribunal Act (supra*) which provides that:

> The Tribunal shall not be bound by any rules of evidence or procedure applicable to any Court.

It is by discerning from the afore provision of the law, even institution of the complaints could be made by normal letter or even orally.

In the case at hand, the Respondent who was the Complainant before the Trial Tribunal filed his complaint by way of a letter dated 2nd June, 2018. After all process, the Ward Tribunal gave her Judgement in the absence of the Appellant on 6th February, 2019. Thereafter what was the remedy for the Appellant?

I do agree with the argument of the Appellant on the following points. *One*, it is true *Section 10 (2) of the Land Disputes Courts Act (supra)* allows the use of *the Ward Tribunals Act (supra)* in land matters in the Ward Tribunal should there be a *lacuna in the Land Disputes Courts Act (supra)*. *Two*, there is no any provision in *the Ward Tribunals Act (supra)* that allows an aggrieved person to file an application in the Ward Tribunal to set aside its Judgement or Orders made ex-parte. *Three, Section 19 of the Land Disputes Courts Act provides for the right to appeal against the decision of the Ward Tribunal to the District Land and Housing Tribunal* within 45 days. henceforth the Appellant filed *Land Appeal No 14 of 2019*.

However, I do not subscribe to the submissions of the Appellant on the point that once the Ward Tribunal has made its Judgement then it becomes *functus officio.* Though it is true that the Ward Tribunal Act is

silent on the remedy as against its ex-parte Judgement or Orders, but there are other options to fill the gap of such kind. It is the principle of practice that allow the adjucative bodies in Civil matter to use *Civil Procedure Code (supra)* whenever there is a *lacuna*. There are two points here: *One*, reading conjunctively *Sections 16 (2) (a) of the Ward Tribunal Act (supra)* and *15 (1) of the Ward Tribunal act* (*supra*). The practice of the Ward Tribunals of regulating their own procedure embodied with the principle of the right to be heard, would demand an unheard party be afforded an opportunity of being heard. If his absence to the trial was with good cause, the Ward Tribunals should have the right to set aside its own decision and accord the right to be heard to both parties on the substantive matter. Upon refusal, the appeal right will be available to him/her.

Two, it is the firm position of this Court that; *the Civil Procedure Code (supra)* in the instant situation can be used in the Ward Tribunal in order to reach the end of justice. Under the provision of *Order IX, Rule 9 of the Civil Procedure Code, (supra),* the remedy available for the person aggrieved by the ex- parte Judgement is to apply in the same Court or Tribunal to set aside the said Judgement or Ruling or Order. In the case at hand, unlike the procedure taken in normal Courts, the Appellant could have approached the Ward Tribunal through a letter showing why he was not there when the matter was fixed for hearing. He could even complain orally and seek for the right to be heard. The remedy requiring setting aside ex-parte decision was well explained in the case of **James Kabayo Mapalala** *(supra*).

Further, the point of setting aside ex-parte decision was centre of discussion by this Court in the case of **Daniel Sebastian v. Sebastian**

Daniel Oldetariki, Misc Land Case Application No. 51 of 2020 where the Court contended that:

> *As a matter of practice a party who did not enter appearance during ex-parte decision if aggrieved his remedy is to first apply to the Court to set aside the ex-parte decision and not to appeal.*

I would give strength to two points argued by Counsel Kisakali. To start with the application of the doctrine of precedent. I do subscribe to the submissions that; the decisions of the High Court and Court of Appeal are binding the subordinate Courts automatically under doctrine of precedent which eminent its origin under common law which are source of law in Tanzania under the provisions of *Section 2 (3) of the Judicature and Application of Laws Act (supra) and Section 180 (1) (b) of the land Act (supra).* Indeed, *Ward Tribunals are regarded as Courts under the provisions of Section 167 of the Land Act (supra)* which vests with exclusive jurisdiction to the herein below Courts, to hear and determine all manner of disputes, actions and proceedings concerning land.

(a) The Court of Appeal of Tanzania.

(b) The High Court of Tanzania

(c) The District Land and Housing Tribunals

(d) Ward Tribunals

(e) Village Land Councils.

It is the findings of this Court that even the *orbiter dicta* or enunciation of the principle of the Court of record pronounced *ex cathedra* on a point raised and argued before the Court will be binding on the subordinate Court including Ward Tribunals and District Land and Housing Tribunals. In the case of **Omary Abdallah Kilua v. Joseph Rashid Mtunguja**, Civil Appeal No. 178 of 2019, Court of Appeal of Tanzania at Tanga, at page 7 (unreported) the Court stated:

> We want to say in the clearest terms that in the ordinary terms of things, a direction given by superior Court to a Court subordinate to it should be observed and complied to the letter. Otherwise it will amount to breach of the long-established principle of *stare decis*.

Again, as observed by this Court in the case of **Republic v. Shaibu S/O Putika And Christopher S/O Frank @ Kawehanga,** Criminal Sessions Case No. 56 of 2017, High Court of Tanzania at Njombe (unreported) in event of two conflicting decisions of the Court of record, the subordinate Court including Ward Tribunals have only four le-way: *One*, to distinguish facts of the case before them by opting to take one authoritative precedent. *Two*, to follow the decision of the full Bench. *Three*, not to follow the decision made per incuriam. *Four*, to follow the Judgement which appears to it to state the law most accurately, elaborately with logic in the circumstances of given facts.

In the circumstances of this case, there are two conflicting decisions enunciated by the Court of records on the remedy against ex-parte Judgement. The first school of thought maintains that a party cannot appeal or file revision against an ex-parte Judgement, summary or

default Judgement without applying for setting aside before the trial Court. The profounder of this School of Thought are many, to wit Hon. Mwarija, Mwambegele and Gwariko in the case of **Yara Tanzania Limited v. DB Shapriya and Company Limited,** Civil Appeal No. 245 of 2018, Court of Appeal of Tanzania at Dar es Salaam. In that case, the Court of Appeal at page 12 held:

> *So much for the law on the point. To recap, it is now settled that when a party is aggrieved with an ex-parte, summary or default Judgement of the High Court, he must first exhaust the alternatives or remedies available in the High Court before coming to the Court on revision or appeal. If that is not done, the revision or appeal to the Court will be rendered misconceived and prone to be struck out.*

In reaching the afore decisions, the Court of Appeal in the case of **Yara Tanzania Limited** (*supra*) revisited its own previous decisions in the case of **Integrated Property and 2 Others v. The Company for Habitat and Housing in Africa**, Civil Appeal No.107 of 2015 (unreported), **Regional Manager TANROADS Lindi v. DB Shapriya, Civil Appeal No. 86 of 2010 (unreported)** and **National Investment Company Limited and Another v. Public Service Pensions Fund (PSPF) and 6 Others**, Civil Application No. 154 of 2012 (unreported).

The second school of thought maintains that an ex-parte decision is appealable but there are cannot be two actions at the same time, one action challenging it to the Court of Appeal and another action moving

the trial Court to set aside such decision. The profounder of this School are Makame J.A, Ramadhani J.A and Mrosso, J.A. In the case of **Jaffari Sanya Jussa and Ismail sanya Sanya Jussa v. Saleh Sadiq Osman**, Civil Appeal No. 54 of 1997, Court of Appeal of Tanzania at Zanzibar. In that case, the Court having revisited *Order XI Rule 14 of the Civil Procedure Code (supra)* made the following interesting, valid and guiding principles:

> *This rule of setting aside an ex-parte decree will only benefit a defendant. But there are two more possible scenarios in an ex-parte decree: One, a defendant might not want to set aside an ex-parte decree but might wish to contest the findings or the award. Two, a plaintiff notwithstanding that the decree is in his favour, might nevertheless wish to challenge the findings or the award....it is abundantly clear to us that concurrent jurisdiction exists only with respect to setting aside an exparte decree. Now, could a defendant pursue both avenues at the same time? We think not and we have three reasons for rethinking so.*

My brethren Maige J. (as he then was) subscribed to the position of right of appeal against ex-parte decision. In the case of **The Registered trustees of Pentecostal Church in Tanzania v. Magret Mukama (A Minor by Her Next Friend, EdWard Mukama),** Civil Appeal No. 45 of 2015, High Court of Tanzania at Mwanza (unreported), after revisiting the decision of **the Board of Trustees of the National Social Security Funds v. The New Kilimanjaro Bazaar Limited**, Civil Appeal No. 16 of 2004

(unreported). When required to decide on interpretation of the provisions of *Section 70 (2) of the Civil Procedure Code (supra), Maige J. (as he then was)* made the following observation at page 9 of the Ruling:

> *In my opinion therefore, since the provision of section 70 (2) of the CPC clearly and unambiguously provides for an automatic right of appeal against an ex-parte Judgement, it is not for the Court to, by way of interpretation, cut down its scope by speculating that the legislature intended to impose such a precondition. I have therefore no doubt from the foregoing authorities; that a right to appeal against an ex-parte decree on its merit is automatic and does not depend upon there being a prior attempt to have it set aside.*

Section 70 of the Civil Procedure Code (supra) caters for appeal from original decree. It Provides:

> 1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court form every decree passed by a Court of a resident magistrate or a district Court exercising original jurisdiction.
>
> *2) An appeal may lie from an original decree passed ex parte.*

3) No appeal shall lie from a decree passed by the Court with the consent of the parties. (Emphasis added)

By exercising the position of this Court given in the case of **Shaibu S/O Putika And Christopher S/O Frank @ Kawehanga** (*supra*), I find guided with the position of the Court of Appeal in the case of **Jaffari Sanya Jussa and Ismail sanya Sanya Jussa** (*supra*) on the point that; an ex-parte decree can be appealed by the decree holder if he wishes to challenge it. Indeed, I stand guided that; there can be an appeal if the ex-parte Judgement Debtor wishes not to set aside an ex-parte decree but to contest the findings or the award. But if the ex-parte Judgement Debtor wishes to set aside the ex-parte decree or default decision or order, he/she must exhaust the local remedies in terms of the case of **Yara Tanzania Limited** *(supra)*.

However, the circumstances of the case of **Jaffari Sanya Jussa and Ismail sanya Sanya Jussa** (*supra*) are distinguishable to the instant case for one obvious reason. In the present case, the Appellant wished to set aside an ex-parte decree before the District Land and Housing Tribunal. He was not contesting the findings or the award only. His prayers before the District Land and Housing Tribunal for Njombe at Njombe were as follows:

(i) That the Judgement of the Ward Tribunal of Manda in Land Complaint No. 2 of 2018 be quashed and set aside;

(ii) That the Honourable Tribunal be pleased, after quashing and setting aside as per (i) above, to

order Trial *de-novo* so that the case can be determined interparties.

(iii) Costs of the appeal be borne by the Respondent

(iv) Any other relief (s) as the Honourable Tribunal may deem fit and just to grant.

Having gone through the details of the impugned appeal, I noted the contents of the appeal was meant to challenge the decision of the Trial Ward Tribunal for Manda on denial of the right to be heard. It is the findings of this Court that; such denial of the right to be heard must be challenged before the same Ward Tribunal. Upon refusal to be heard, the Appellant could then file an appeal before the District Land and Housing Tribunal within 45 days from the day of its decision on refusal to set aside the ex-parte decision.

I further do agree with the opinion of my brethren his Lordship Maige, J. (as he then was) in the case of **The Registered trustees of Pentecostal Church in Tanzania** *(supra)* on the point that where the provisions of a statute are plain and unambiguous, there is no need to resort to rules of construction.

However, in my humble opinion, the wording of *Section 70 (2) of the Civil Procedure Code (supra)* requires constructive interpretation. I have taken cognizance of the above general exposition of *Section 70 (2) of the Civil Procedure Code (supra).* The said provision bears the word "may" which means an appeal against ex-pate decree is optional. In my opinion, appeal against ex-parte decision without exhausting available local remedies will have six negative repercussions. ***One***, litigants will

not diligently pursue their rights of being heard before the trial Court with the hope that they can appeal against any decree to be issued by the Court. ***Two***, appeal against ex-parte decree will reduce weight of interparty Judgement in the sense that one can appeal against a decision reached interparty or ex-parte. ***Three***, entertaining appeal against ex-parte decree will flood higher Courts with unnecessary appeals. ***Four***, in case the Judgement Debtor was aware of the matter, it will be wastage of time and resources of the ex-parte decree holder whose decree can be challenged without the other party telling reasons as to why he never attended the matter that resulted into ex-parte decree. ***Five***, it will discourage the whole process of issuing summons to the other party on the reason that whatever results comes up is appealable. Here it comes the importance of exhausting local remedies prior preferring an appeal to the higher Court. ***Six***, parties will be interpreting the law in pieces. Here I mean, *Order IX, Rule 9 of the Civil Procedure Code (supra) and Section 70 (2) of the Civil Procedure Act (supra)* should be interpreted jointly in the sense that a party cannot appeal against ex-parte decision without exhausting local remedies unless the appeal is preferred by the ex-parte decree holder or the ex-parted Judgement debtor seeks to contest the findings or the award only.

The second point to strengthen is on the determination of the parties' dispute on substance. The Appellant in this appeal substantively prayed for quashing and setting aside the decision of the Njombe District Land and Housing Tribunal and order *Land Appeal No. 14 of 2019* be restored and heard by the Njombe District Land and Housing Tribunal. If this Court is to grant the prayers, there are no any evidence adduced by the

Appellant before the Trial Tribunal. It will therefore be wastage of time of the parties and of the Appellate Tribunal itself.

Considering the above parties' arguments, the two schools of thought, and the analysis made, I subscribe to the general rule propounded in the case of **Yara Tanzania Limited** (*supra*) that; as matter of principle, ex-parte Judgement, summary or default Judgement of any Tribunal or Court are not appealable. However, there are two exceptions to the general rule as expounded in the case of **Jaffari Sanya Jussa and Ismail sanya Sanya Jussa** *(supra)*. *One, if the ex-parte Judgement Debtor wishes to contest the findings or the award but not the ex-parte decree. Two, the Decree Holder if he wishes to challenge the findings or the award regardless of being in his favour.*

In the upshot, I hereby dismiss the appeal in its entirely with costs. Hence, the decree and orders of the Land and Housing Tribunal for Njombe are hereby upheld.

THE HIGH COURT OF TANZANIA

Y.J. MLYAMBINA

JUDGE

14/12/2021

Judgement pronounced and dated 14th December, 2021 befor the Appellant in person and learned Counsel Marco Kisakali for the Respondent. Right of Appeal explained.

Y.J. MLYAMBINA

JUDGE

14/12/2021