**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**
**(LAND DIVISION)**
**AT DAR ES SALAAM**

**LAND APPEAL NO. 200 OF 2021**
(Arising from Kinondoni District Land and Housing Tribunal in Misc. Land Application No. 57 of 2020)

**AUDAX RWEYEAMU KAMUHAMBWA.....1ST APPELLANT**
**DUCRESIA KAMUZORA BAGENDA** (As Legal Personal Representative of the Late DAVIS BAGENDA).....**2ND APPELLANT**
**ESTHER LENGWA NKUBA** (As Legal Personal Representative Of The Late Godfrey KALUGABA BAGENDA).....**3RD APPELLANT**

**VERSUS**

**ASHA ALI OMARY.....RESPONDENT**

Date of Last Order: 21.12.2022
Date of Judgment: 27.01.2023

**JUDGMENT**

**V.L. MAKANI, J.**

The appellants herein are appealing against the decision of the Kinondoni District Land and Housing Tribunal (the Tribunal) in Misc. Land Application No. 57 of 2020 (Hon. S.H. Wambili, Chairman).

At the Tribunal the respondent was granted extension of time within which to set aside the ex-parte judgment in Land Application No. 442 of 2006 which decision was delivered on 28/09/2007.

The appellants being dissatisfied with the decision of the Tribunal has filed this appeal with the following grounds of appeal in their amended Memorandum of Appeal:

1. *That the trial Chairperson erred in law and in fact by entertaining the application which was bad in law as it contained omnibus prayers and involved different provisions of the law.*

2. *That the trial Chairperson erred in law and in fact by failure to exercise judicially the discretion having exercised it judicially he could have dismissed the application for lack of merit.*

3. *That the trial Chairperson erred in law and in fact by his failure to assess and evaluate properly the records/proceedings in Land Application No. 442 of 2006, High Court Land Division in Misc. Land Application No. 20 of 2008 and Misc. Land Application No 57 of 2020 hence he reached a wrong decision for granting the application.*

4. *That the trial Chairperson erred in law and in fact to grant extension of time to set aside the exparte judgment while the respondent in her affidavit in support of the application denied to have filed any defence/reply in Land Application No 442 of 2006.*

5. *That the trial Chairperson having found that Misc. Land Application No. 57 of 2020 was filed 12 years after the exparte judgment was delivered ought to have dismissed the application.*

6. *That the trial Chairperson having found that the respondent was present when Land Application No. 442 of 2006 was ordered for hearing on 18th April, 2007 and the trial tribunal and High Court records revealed that the respondent applying for certified copy of the exparte*

*judgment and decree lodged notice of appeal, paid for the necessary fee vide Exchequer Receipt No. 30344527 on 3rd October 2007 and filed Misc. Land Application No. 20 of 2008 hence the respondent was aware of the case and the exparte judgment.*

7. *That the trial chairperson erred in law and in fact by extending time to the respondent who failed to comply to principles to be considered when granting an application for extension of time as stipulated in case law.*

The appellants prayed for the appeal to be allowed and the decision of the Tribunal be quashed and the ex-parte judgment be reconfirmed. The appellants also prayed for costs of this appeal.

The appeal was argued by way of written submissions. Mr. Cleophas Manyangu, Advocate drew and filed submissions on behalf of the appellants, while Mr. Hosea Chamba, Advocate drew and filed submissions on behalf of the respondent.

In his submissions in chief, Mr Manyangu gave a brief history of the matter. That the Tribunal delivered an ex-parte judgment in favour of the appellants on 28/09/2007 whereas the appellants were declared lawful owners of Plots No. 950,951, 952, 953 and 954. After the delivery of the ex-parte judgment the respondent on 02/10/2007 lodged a notice of appeal and requested for certified copies of the

judgment and decree. He said despite that the copies were ready for collection on 10/12/2007 but no essential step was taken to set aside the ex-parte judgment. Mr. Manyangu said on 11/03/2008 the respondent filed Misc. Land Application No 20 of 2008 seeking leave to appeal out of time against the decision of the Tribunal and stay of execution. He said this application was withdrawn by the respondent herself. He said no further steps were taken until in 27/12/2019 when the respondent filed application No. 57 of 2020 at the Tribunal which is subject of this appeal. He said on the other hand the appellants after the decision of Tribunal on 28/09/2007 proceeded with execution which has duly implemented.

As for the first ground of appeal, Mr. Manyangu said the Chairperson erred in law and facts for entertaining an application which was bad in law as it contained omnibus prayers. He said the prayers in Misc. Land Application No. 57 of 2020 were that (a) application for extension of time in which to file an application to set aside the ex-parte hearing and judgement (b) an application to set aside an ex-parte hearing and judgment (c) costs of the application and (d) any other reliefs which the Tribunal deemed fit and just to grant. He said the application was made under section 14(1) of the Law of Limitation

Act CAP 89 RE 2019 (the **Limitation Act**), Regulation 11(2) of the Land Disputes Court (the **Regulations**) and section 95 of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**). He said although there is no law forbidding combination of two prayers in one application but as noted in the case of **Tanzania Knitwear Limited vs. Shamshudin Esmail [1989] TLR 48** the prayers must be within the same provision of the law or otherwise the application becomes incompetent. He said the application was incompetent as the prayers fell under the Limitation Act, the Land Disputes Court Act and the CPC. He also relied on the case of **Abbas Hamis vs. Najma Hassan Ally Kanji, Misc. Land Application No. 140 of 2017 (HC-Land Division)** (unreported). He said if the prayers were related, and the affidavit was fine as observed by the Chairperson then he would have determined the second prayer. He said since the Chairperson did not do so but just extended the time, it implied that a fresh application has to be filed hence the two prayers are not related. He said this affected the competence of the whole application.

Mr. Manyangu consolidated the second and seventh grounds which is to the effect that the Chairperson failed to exercise his judicial discretion to extend time. he said the Chairperson ought to have

satisfied himself that there existed material facts placed by the respondent in granting such an extension of time. He relied on several cases including **Lyamuya Construction Company Limited vs. Board of Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010 (CAT-Arusha)** (unreported). He said the affidavit of the respondent reflected that the application for setting aside the ex-parte order was supposed to be filed before 27/10/2007 but on 03/10/2007 she filed a notice of appeal and requested for copies of judgment and decree while stating that she was not aware of the date of the judgment. He said the respondent also said that she did not file any reply to the application while the records of the Tribunal show that on 27/02/2007 she filed a reply. Mr. Manyangu said it is not stated why the respondent did not take essential steps from filing an application for setting aside the ex-parte judgment and instead she lodged a notice of appeal and requested for copies of the judgment and decree. He said when exercising the discretion to grant extension of time the Chairperson ought to have looked at the length of time but he said the delay of 12 years is inordinate and need some explanation. He said in the case of **Bashiri Hassan vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007** it was stated that a delay of even a single day has to

be accounted for but in the application at the Tribunal the respondent did not account for the delay. Mr. Manyangu in analysis said that the periods as reflected in the affidavit could be divided in three (i) the period covering from when the ex-parte hearing commenced and judgment was delivered on 28/09/2007 until when the respondent was convicted of criminal charges on 31/12/2014, (ii) the period covering the conviction, appeal and release that is from 31/12/2014 to 22/04/2016 (iii) the period after the release or discharge of the criminal charges from 22/04/2016 to 27/12/2019. He said in the period covering from when the ex-parte hearing and judgment was delivered on 01/03/2007 to 28/09/2007 until when the respondent was convicted of criminal charges on 31/12/2014 the Tribunal records reveal that the respondent was not only served with summons to file defence, but he also filed her reply to the application on 21/02/2007. She was in court on 27/03/2007 and when the ex-parte judgment was delivered on 28/09/2007 she immediately filed a notice of appeal showing that she was aware of the said judgment, and she also filed Misc. Land Application No. 20 of 2008. The period 27/10/2007 to 31/01/2014 before the respondent was convicted covers the years 2007,2008,2009,2010,2011,2012 and 2013 and the respondent has failed to account for the said delay because the story in her affidavit

is different from the records in the Tribunal and High Court. Mr. Manyangu said he has no queries with the period covering the conviction, appeal and release that is from 31/12/2014 to 22/04/2016. In the period after the release or discharge of the criminal charges from 22/04/2016 to 27/12/2019 (about 42 months), Mr. Manyangu said it has not been accounted for. He said the affidavit shows that the respondent went to Zanzibar after the release to look for family affairs but that is not a good reason as she did not take action from 2016 to 2019. In summary he said the respondent did not adduce good or sufficient reasons to convince the Tribunal to exercise it judicial discretion to grant the application for extension of time and the Chairperson erred in law for failure to exercise the said discretion.

In the third ground Mr. Manyangu said the Chairperson failed to properly evaluate the records and proceedings in Land Application No. 442 of 2006, Misc. Land Cause No. 2008 (High Court), Misc. Land Application No. 57 of 2020 at the Tribunal and hence he reached a wrong decision in granting extension of time. He said despite the fact that the respondent was aware of the ex-parte judgment and Misc. Land Application No. 20 of 2008, the respondent in Misc. Land Application No. 57 of 2020 brought a new story that she was not

aware of Land Application No. 442 of 2006. He said in Misc. Land Application No. 57 of 2020, which is subject of this appeal, the respondent in her affidavit did not state that she attempted to pursue an appeal out of time instead of applying for setting aside the ex-parte judgment.

As for the fourth ground Mr. Manyangu said the trial Chairperson erred to grant extension of time to file an application to set aside the ex-parte judgment while the respondent in Misc. 57 of 2020 denied having filed any defence/reply in Land Application No. 446 of 2006. He said the records show that the respondent in 21/02/2007 filed a reply to the application.

As for the fifth and sixth grounds Mr. Manyangu said he respondent was aware that an ex-parte judgment was delivered against her and he wondered what made the respondent not to file an application for setting aside the exparte judgment until 12 years down the line. He said the trial Chairperson also erred when he granted extension of time having found that the respondent was present when Land Application No. 442 of 2006 was ordered for hearing on 18th April, 2007 and the trial Tribunal and High Court records revealed that the

respondent applied for certified copy of the ex-parte judgment and decree and lodged notice of appeal and filed Misc. Land Application No. 20 of 2008. He emphasized that the respondent was aware of the case and the ex-parte judgment and he prayed for the appeal to be allowed with costs.

In reply, Mr. Chamba for the respondent stated that the order for extension of time is non appealable order and so the appeal automatically collapses. He backed his argument by section 74(1) and (2) and also 75 of the CPC. He further said an order for extending time is not among the orders under Order XL Rule 1 of the CPC which warrants an appeal.

As for the substantive grounds of appeal, Mr. Chambo submitted on the first ground that the issue of the omnibus prayers was made by Counsel for the appellants but was later abandoned by not submitting on it. He said it is strange that this is reopened at the appellant stage. He said in any case omnibus prayers are not fatal according to the case of **Tanzania Knitwear Limited** (supra) and also **MIC Tanzania Limited vs. Minister for Labour & Youth Development, Civil Appeal No. 103 of 2004** (unreported). He

said the orders were not diametrically opposed to each other as one follows another therefore the application was not bad in law. He said in the case of **Ally Salum Said vs. Iddi Athumani Ndaki, Misc. Land Application No. 718 of 2020 (HC-Land Division)** (unreported) the court stated that it is convenient for the court to serve both prayers as long as there are interrelated. He thus prayed for the court to rule that the first ground has no merit.

As for the second and seventh grounds, Mr. Chamba said the Chairperson exercised his discretion correctly in extending the time as the respondent in her affidavit denied having been involved at any stage in Land Application No. 442 of 2006 which was decided ex-parte in favour of the appellants. He said the summonses involved were not served upon the respondent as they contained different signatures, as such they were a fictitious person purporting to be her who appeared in court and later disappeared. He said the respondent became aware that there was a judgment in 2010 when he filed a case against the trespassers and thereafter she was jailed after the appellants filed a criminal case against her which prevented her from challenging the decision. He said the respondent properly accounted for each day of her delay. He said the claim of illegalities sufficed for

the grant of extension of time which could be obsnerved from the conduct of the proceedings, that is issuance of summons, proceeding ex-parte and delivery of judgment fro which the respondent was not notified. The respondent denied having issued a notice of appeal to the High Court.

As regards the third ground that the Chairperson erred in law and in fact for failure to assess and evaluate properly the records in Land Application No. 442 of 2006 hence reached a wrong decision, Mr. Chamba submitted that the Chairperson ruled on the application for extension of time and what he had to consider was whether there existed sufficient reasons for the delay or if the delay was accounted for. He said the sufficient reasons were not to be found in records but from the applicant [respondent] who had to produce the facts. He said in any case the records also proved existence of different summons bearing different signatures purported to have been served upon the respondent, the fact that the respondent was in prison and that there were illegalities involved. He said the Chairperson correctly extended the time to enable the records to be scrutinized while determining an application to set aside the ex-parte decision.

As for the fifth and sixth grounds of appeal that the trial Chairperson erred in law and fact in granting extension of time while the respondent denies having filed a reply to the application. Mr. Chamba said this is not a fact to be considered in granting an extension of time. he said maybe this ought to be considered in the latter stages maybe in the application to set aside the ex-parte judgment. He said even if the respondent had filed a reply, it would not have disturbed the principles involving extension of time which were correctly adhered to. He said the court has to consider the fact that the respondent only became aware of the ex-parte judgment in 2010 when she saw trespassers in her land, and she was not involved in Land Application No. 442 of 2006 which was decided ex-parte in favour of the appellants. He said it is unjust to deny the respondent extension of time so that all issues on conduct of the proceedings may be addressed. He said apart from the appeal being incompetent as the order is not appealable, but it is also devoid of merits. He prayed for the court to dismiss it.

In rejoinder, Mr. Manyangu stated that the cited sections 74 (1) and (2) of the CPC are irrelevant in the present instance as there is no pending suit before this court after the ex-parte judgment was

delivered on 28/07/2007. He said what was before the Tribunal was an application to set aside the ex-parte judgment as such the cited provisions are irrelevant. He said there is no specific provision of the law in the Land Disputes Court Act and its Regulations which deals with extension of time, but applications for setting aside the ex-parte judgment are regulated by Regulation 11(2) of the Regulations for appeals originating from the Tribunal to the High Court. He said there is no lacuna in the Land Dispute Courts Act necessitating the application of the CPC. He invited the court to revisit Part V of the Land Disputes Courts Act which covers appeals from the Tribunal. He said Regulation 11(2) of the Regulation provides that a person dissatisfied with the decision of the Tribunal may within 30 days apply to have the order set aside. And if a party is dissatisfied with the decision of the Tribunal, he/she may appeal to the High Court. He said Misc. Application No. 57 of 2020 by the respondent for setting aside the ex-parte judgment, which is the subject of this appeal, was made under section 14(1) of the Limitation Act and Regulation 11(2) of the Regulations. Mr. Manyangu went on saying that in case a judicial officer fails to exercise discretionary powers judicially then his decision is subject to an appeal as is in the case of **Nyanza Road Works Limited vs. Giovanni, Civil Appeal No. 75 of 2020 (CAT-**

**Dodoma)** (unreported). He thus concluded that the appeal is competently before this court and the indirect objection be overruled.

In re-joining the first ground of appeal, Mr. Manyangu reiterated what he said in the submissions in chief but emphasized that the appellants submitted extensively on the omnibus prayers in the application, but the Tribunal did not make a ruling to that effect. He said if the application was competent then the Tribunal would not have ordered the respondent to make a fresh application to set aside the ex-parte judgment within 30 days.

As for the second and seventh grounds, Mr. Manyangu reiterated what he said in the submissions in chief but stressed that the respondent ought to have accounted for the 12 years after the ex-parte judgment and also there are a lot of inconsistences in the sworn statements in Misc. Land Application No. 57 of 2020, Land Application No. 442 of 2006 and Misc. Land Application /Cause No. 20 of 2008. He said even if we assume that the respondent became aware of the ex-parte judgment on 16/12/2016 as per paragraph 28 of her affidavit but she did not account for the delay from that date to 31/01/2014 when she was jailed. Mr. Manyangu continued to observe that the

respondent was served with summons to file WSD on 02/01/2007 and she did so and also the Chairman admitted that the respondent was present in court on 18/04/2007 and she requested for certified copies of the judgment and decree on 03/10/2007 and lodged a notice of appeal. He reiterated that the respondent has not accounted the delay from 21/04/2016 after she was released from jail to 27/12/2019 when she instituted the application at the Tribunal.

On the issue of illegality Mr. Manyangu said there is only a general statement to that effect in paragraph 23 and 31 which does not specify the illegalities alleged. And in Misc. Land Application No. 57 of 2020 there is nowhere specifically and strictly where illegalities has been pleaded. He said illegalities have to be obvious and should not involve long drawn arguments for it to qualify as a ground of extension of time. he said the issue of illegality was raised in the submissions and not pleaded in the affidavit or chamber summons as such they are mere words from the bar. He relied on the case of **Hassan Abdulhamid vs. Erasto Eliphase, Civil Application No. 402 of 2019 (CAT-DSM)**(unreported). Mr. Manyangu said the respondent also alleged forgery and fraud, but he said this are matters to be proved and such cannot be termed illegality at this

stage. The only remedy was to first institute criminal proceedings against any person who is suspected to be part of the allegation. He went on saying fraud or forgery as contained in paragraph 36 of the respondent's affidavit is not a sufficient cause for extension of time. He reiterated his prayers for the appeal to be allowed with costs.

I have gone through the records of the Tribunal and the rival submissions by Counsel for the parties. The main issue is whether this appeal has merit.

I will start with the procedural aspect raised by Mr. Chamba that the order of the Tribunal is not appealable. First, I would wish to state at the outset that the respondent was supposed to raise this matter as a preliminary objection at the earliest possible time, but this was not done. The raising of this objection surreptitiously within the submissions is contrary to the procedures and I hold that it cannot be entertained.

In any case and without prejudice to what have been stated above, Section 74 that is cited by Mr. Chamba to support the said objection is irrelevant as the order before the Tribunal is not an interlocutory

order, it is an order which finalised the matter. The respondent prayed for extension of time and the order was granted so there is no pending application in the Tribunal the matter was finally determined, as such it cannot be linked to section 74(2) of the CPC. Even if the respondent would argue that there is an application to set aside, but that is a fresh application, which procedurally would require a new reference. The order of the Tribunal for extension of time does not qualify to be interlocutory. Further, as correctly stated by Mr. Manyangu the application at the Tribunal (Misc. Land Application No. 57 of 2020) was for extension of time and to set aside the ex-parte judgment. The application was made under section 14(1) of the Limitation Act and Regulation 11(1) of the Regulations. And in terms of Regulation 11(2) where a party is not satisfied with the decision of the Tribunal has a right to an appeal, which is the course that has been taken by the appellants. This objection therefore has no merit, and it is dismissed.

As for the grounds of appeal, I will consider them generally as the complaints raised by the appellants revolve around failure by the Chairperson to evaluate and exercise his discretion to extend the time judiciously as there were no sufficient reasons that were advanced

for the grant of the said extension of time. And further that, the application was incompetent for being omnibus.

I have perused the judgment and the records in the Tribunal, the central reason advanced by the respondent seeking for the grant of extension of time was that she was not aware of the judgment by the Tribunal which was delivered on 28/09/2007. However, a close scrutiny of the records of the Tribunal reflect that the respondent was present in court on 27/03/2007 when the matter was set for hearing on 18/04/2007. But on the said date, that is, on 18/04/2007 she did not enter appearance and there was no information of her whereabouts. The matter therefore proceeded ex-parte. The Chairperson in his judgment stated this fact at page 5 as follows:

> *"Mwenendo wa shauri hilo la ardhi Na. 442/2006 unaonyesha kuwa shauri lilisikilizwa upande mmoja tarehe 18/04/2007 siku ambayo muombaji huyu hakuwepo. Nimesoma mwenendo uliombatanishwa na kiapo kinzani inaonyesha kuwa mwombaji/mjibu maombi katika kesi ya msingi alikuwepo wakati shauri linapangiwa kusikilizwa tarehe 18/04/2007 na siku hiyo ya tarehe 18/04/2007 hakufika na shauri ndipo lilianza kusikilizwa upande mmoja dhidi ya mwombaji wa maombi haya ana kuhitimishwa tarehe 19/07/2007 na hukumu ilipangwa 17/08/2007 ambapo haikusomwa ilipangiwa tarehe 30/08/2007 haikusomwa na hatimaye kusomwa 28/08/2007 wakati mwombaji hayupo na hakutaarifiwa tarehe ya hukumu."*

Despite the above analysis, the Tribunal went on to state the respondent was not notified of the date of the judgment, she was deprived of her right to be heard hence the grant of extension of time.

The reasoning of the Tribunal is misconceived because it is apparent from the above quote that the respondent was aware of the hearing date but decided not to take any action by attendance or by instructing an advocate. The reasoning of the Chairperson would have been conceivable, in my view, if the respondent had not made any appearance throughout the proceedings as was in the case of **Cosmas Construction Company Limited vs. Arrow Garments Limited [1992] TLR 127** which was cited by the Chairperson. The fact that the respondent was present in the proceedings is enough to establish that the respondent was aware of the matter before the Tribunal to the extent that his advocate Mr. Andrew Nehemiah Mwakajinga vide a letter dated 02/10/2007 requested to be supplied with certified copies of the proceedings and judgment for appeal purposes (see annexure **ADG-4A**) of the joint counter affidavit of the respondents (now the appellants). This was further asserted by the filing of an application for leave to appeal out of time and stay of execution in Misc. Land Application No. 20 of 2008 at the High Court

Land Division which application was later withdrawn on 01/08/2008 (see annexures **ADG-4C and ADG-4D** to the counter affidavit). These facts alone are an apparent reflection that the respondent was aware that the hearing was continuing, and she was also aware that judgment had been delivered. In that regard, it was inexplicable for her to state that she was unaware of the date of judgment and not notified of the same. In my considered view the Chairperson erred when he relied on only one issue of notice of the date of judgment without bearing in mind the other factors. I am sure if he had considered the facts collectively his decision would have been different.

I would also wish to point out that indeed, it is the law that grant of extension of time is the discretion of the court, and it has to be given judiciously. And in so doing the applicant has to adduce sufficient reasons and account for the delay. In the case of **Lyamuya Construction Company Limited** (supra), the Court of Appeal gave guidelines for the grant of extension of time amongst others being that the applicant must account for all the period of delay, and that the said delay should not be inordinate. In the matter at hand, the respondent at the Tribunal did not account for the delay. As

established above, the respondent became aware of the judgment on 02/10/2007 when she requested for the copies of the proceedings and judgment for appeal purposes. She on 25/02/2008 filed in the High Court Misc. Application No. 20 of 2008 which was withdrawn on 01/08/2008. From this date, that is, on 01/08/2008 to 31/10/2014 when she was convicted, the delay is not accounted for. In fact, the affidavit of the respondent in the Tribunal says nothing about this period. This creates an adverse inference against the respondent as to whether she was truthful in explaining what actually transpired. Further, from 22/04/2016 when she was released from prison to 27/12/2019 the respondent states in her affidavit that she went to Zanzibar to look for the affairs of her late mother, but there is no proof of the death of her mother, and that indeed, she was in Zanzibar. As observed hereinabove, the Chairperson only directed his attention to the non-issuance of the notice of the judgment date but did not look at other circumstances that warranted him to exercise his discretionary powers judiciously. In other words, the Chairperson failed to judiciously exercise the powers bestowed on to him for grant extension of time. In that regard the grounds of appeal have merit.

The appellants also raised the issue of omnibus prayers. This issue is procedural. This was raised as a preliminary objection at the Tribunal, but the said objection together with others were struck out. In our jurisdiction omnibus prayers are allowed where it is established that the prayers are interrelated and are capable of being jointly determined (see **Tanzania Knitwear Limited** (supra). Now, did the application before the Tribunal satisfy this condition. The first prayer in the application had two limbs, that is, extension of time to set aside the ex-parte order and setting aside the ex-parte order. Indeed, these two prayers are governed by two different provisions of the law that is section 14(1) of the Limitation Act and Regulation 11(1) and (2) of the Regulations as such they are omnibus in that they are not interrelated. The application for extension of time ought to have been entertained first and then the application to set aside the ex-parte judgment to follow as the principles in respect of these two prayers are also different. This is quite apparent even from the decision of the Tribunal itself because though the objection on omnibus prayer was struck out together with the other objections, the Chairman found it difficult to give orders to the two prayers in one application. He was forced to order for extension of time only without deciding on the setting aside of the ex-parte judgment. This made it clear that the

applicant had to file another application to set aside the ex-parte judgment. In other words, this second prayer, for setting aside the ex-parte judgment, was clearly misplaced. In view thereof, I find this ground to have merit in that the Tribunal entertained an incompetent application.

For the reasons I have endeavoured to explain hereinabove, the appeal has merit, and it is hereby allowed. The decision of the Tribunal is quashed and set aside. The appellants will have costs of this appeal.

It is so ordered.


**V.L. MAKANI**
**JUDGE**
**27/01/2023**