IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

Appeal No. 12/2021

IN THE MATTER OF: AN APPLICATION FOR AN ORDER TO STAY PROCEEDINGS IN THE TAX APPEALS TRIBUNAL FILED INTO THE HIGH COURT ON 14TH JUNE 2021

IN THE MATTER OF: ARTICLE 28 (2) (b) OF THE CONSITUTION OF ZAMBIA, THE CONSTITUTION OF ZAMBIA ACT, CHAPTER 1, VOLUME OF THE LAWS OF ZAMBIA

IN THE MATTER OF: ARTICLE 11(a) (d) OF THE CONSTITUTION OF ZAMBIA, THE CONSTIUTION OF ZAMBIA ACT, CHAPTER 1, VOLUME 1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: ARTICLE 15 OF THE CONSTITUTION OF ZAMBIA, THE CONSTITUTION OF ZAMBIA ACT, CHAPTER 1, VOLUME 1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: ARTICLE 16 (1) (2) (3) OF THE CONSTITUTION OF ZAMBIA, THE CONSTITUTION OF ZAMBIA ACT, CHAPTER 1, VOLUME 1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: ARTICLE 18 (9) OF THE CONSTITUTION OF ZAMBIA, THE CONSTITUTION OF ZAMBIA ACT, CHAPTER 1, VOLUME 1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: ARTICLE 28 (1) OF THE CONSTITUTION OF ZAMBIA, THE CONSTITUTION OF ZAMBIA ACT, CHAPTER 1, VOLUME 1 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 76; 82; 83; 86(4); 88A; 97 (1) (2); 101; 108 (1) (3) (4) (6) (7) (8) (9) (10) (11); 164; 175; 180; 190 (1) (2) (a) (e) (f); 194; 200 AND THE SIXTH SCHEDULE OF THE CUSTOMS AND EXCISE ACT, CHAPTER 322, VOLUME 8 OF THE LAWS FO ZAMBIA

INN THE MATTER OF: SECTIONS 3 (a) (b) (iii) (d) OF THE REVENUE APPEALS ACT NO.11 OF 1998 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: REGULATIONS 6; 7; 8 (1) OF THE REVENUE APPEALS REGULATIONS, S.I. NO. 143 OF 1998 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 5; 6 (3); 7 (1); 8 (6) (11); 10 AND 20 (1) (2) (b) OF THE TAX APPEALS TRIBUNAL ACT NO. 1 OF 2015 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 19; 20; 22; 23; 24 AND 33 (1) (3) OF THE VALUE ADDED TAX ACT, CHAPTER 331 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 54; 55; 56; 57 (1) (a) (b); 60; 73; 79; 83 AND SECOND SCHEDULE OF HE ZAMBIA DEVELOPMENT AGENCY ACT NO. 11 OF 2006 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 11(1) (a) (b) (2) (3) AND 19 (1) OF THE ZAMBIA REVENUE AUTHORITY ACT, CHAPTER 321 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 52 (b); 53 AND 85 OF THE LEGAL PRACTITIONERS ACT, CHAPTER 30 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 104 (1) (2) (4) (5) (6) (7); 106; 126 AND 344A (a) OF THE PENAL CODE ACT, CHAPTER 87 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 7(1) (2) (a) (b) (d) AND 16 OF THE COMPETITION AND FAIR TRADING ACT, CHAPTER 417 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 2 (1); 3; 8; 46; 82 AND 83 OF THE COMPETITION AND CONSUMER PROTECTION ACT NO. 24 OF 2010 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 3; 14; 39; 40 AND 42 OF THE INTERPRETATION AND GENERAL PROVISIONS ACT, CHAPTER 2 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: ARTICLES 8 (PAR. 2,3,4); 10; 11 (PAR. 1,2); 13; 14; 16; 22 AND NOTE TO ARTICLE 11 OF THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TRADE AND TARIFFS 1994 OF THE WORLD TRADE ORGANISATION

IN THE MATTER OF: **ARTICLE VII (PAR. 3) OF THE GENERAL AGREEMENT IN TRADE AND TARIFFS 1994 OF THE WORLD TRADE ORGANISATION**

IN THE MATTER OF: **ARTICLE 9 (1); 12 (1): 13 (1) (2) (4); 17 (5) OF THE INTERNATIONAL CONVENTION ON THE SIMLICATION AND HARMONIZATION OF CUSTOMS PROCEDURES**

IN THE MATTER OF: **CHAPTER I (GENERAL PRINCIPLES); CHAPTER II (DEFINITIONS); STANDARDS 3.39; 4.14; 8.2; 9.1; 9.2; 9.4; 9.5; 9.8; 9.9 AND CHAPTER X OF THE GENERAL ANNEX OF THE INTERNATIONAL CONVENTION ON THE SIMPLICATION AND HARMONIZATION OF CUSTOMS PROCEDURES**

IN THE MATTER OF: **ARTICLES 5(2) (B); 52 (1); AND 159 (1) (a) (c), 2 (a) (b) (c), (3), (4) OF THE TREATY ESTABLISHING THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA**

AND IN THE MATTER OF: **ARTICLES 1; 2; 16; AND 19 OF THE COMESA COMPETITION REGULATIONS (2004)**

BETWEEN:

NATURAL VALLEY LIMITED **APPELLANT**

AND

ZAMBIA REVENUE AUTHORITY **1ST RESPONDENT**

ATTORNEY GENERAL **2ND RESPONDENT**

CORAM: Malila, Kaoma and Kajimanga JJS

On 2nd November 2021 and 2nd December 2021

For the Appellant: Ms. A. D. A. Theotis of Theotis Mutemi Legal Practitioners

For the 1st Respondent: Mrs C. Chanda, Manager Legal Services with Mr. M. Moonga, Legal Officer

For the 2nd Respondent: Mr. F. Imasiku, Deputy Chief State Advocate with Ms N. Nkazi, State Advocate

JUDGMENT

Kajimanga, JS delivered the judgment of the court

Cases referred to:

1. *The Minister of Home Affairs, the Attorney General v Lee Habasonda, suing on his own behalf and on behalf of the Southern African Centre for the Constructive Resolution of Disputes (2007) Z.R. 207*
2. *Maxwell Zenas Kambandu v Richard Henderson Peters and Others, Appeal No. 58 of 2019*
3. *Shamwana v Mwanawasa (1993-1994) Z.R. 149*
4. *Zinka v The Attorney General (1990-1992) Z.R. 73*

Legislation Referred to:

1. *Constitution of Zambia, Chapter 1 of the Laws of Zambia*
2. *High Court Act, Chapter 27 of the Laws of Zambia, section 2 and Order 30*
3. *High Court (Amendment) Rules, 2020, Order 30, r. 6A*

Other works referred to:

Blacks Law Dictionary, 10th Edition

Introduction

[1] When we heard this appeal, we allowed it and indicated that we shall give our reasons later. This we now do.

[2] This is an appeal against an order of the High Court (Mwikisa, J) delivered on 9th July 2021, declining the appellant's application for an order to stay proceedings in the Tax Appeals

Tribunal ("the Tribunal") pending the determination of its petition before the High Court.

[3] The appeal discusses the effect of a court decision made in the absence of due process and the import of Order 30, r.6A of the High Court (Amendment) Rules, 2020.

Background to the appeal

[4] The appellant instituted proceedings against the 1st respondent in the Tribunal under cause No. 2011/RAT/06/C&E. Following an appeal to the Supreme Court by the appellant on an interlocutory application, the matter was referred back to the Tribunal for determination on the merits. When the matter was restored to the active cause list, the Registrar of the Tribunal issued orders for directions which were later extended by consent of all the parties. On 30th December 2020, the appellant filed its witness statement in compliance with the said directions. The 1st respondent was required to file its witness statement on or before 15th January 2021. However, the Tribunal's secretariat, which is tasked to serve documents on parties, did not serve the 1st respondent in good time. As a result, the 1st respondent was not able to comply with the timelines in the order for directions.

[5] The Registrar of the Tribunal then called for a status conference at which it was sought to rectify the alleged omission by extending the time within which the respondent would comply with the orders for directions. The appellant, however, objected to the said extension on the ground that it had taken almost 11 years for the case to be heard on its merits; further, that there had been several incidences that had led the appellant to believe that it would not receive a fair hearing before the Tribunal and that its rights under Articles 16 and 18 of the Constitution had been violated. The appellant then took out a petition against the respondent before the High Court on 29th April 2021 seeking the following relief:

> *[5.1] A declaration that the 1st and 2nd respondents' actions amount to an infringement of the appellant's right to a fair hearing within a reasonable time.*
>
> *[5.2] A declaration that the 2nd respondent's actions in the matter amount to bias and infringe on the petitioner's right to a fair hearing within a reasonable time.*
>
> *[5.3] A declaration that the 1st respondent's actions in facilitating the granting of illegal incentives to the appellant's competitors amounts to an infringement of the appellant's right to protection of the law.*
>
> *[5.4] A declaration that by reason of the 1st and 2nd respondent's behaviour, the appellant has suffered loss of property through indirect expropriation and is entitled to be compensated for the*

same in accordance with COMESA treaty and COMESA competition rules 2004.

[5.5] Exemplary damages to be assessed by this Honourable Court to reflect more than ten years of illegal and degrading treatment resulting in mental torture.

[5.6] Costs.

[5.7] Such declaration and orders as this Court may deem fit.

[6] Subsequently, on 30th April 2021, the appellant filed an application before the Tribunal to stay the proceedings commenced by the appellant in the said Tribunal pending determination of its petition in the High Court. On 21st May 2021, the Registrar of the Tribunal issued a ruling dismissing the application on the premise that the Tribunal had exclusive jurisdiction to hear tax appeals emanating from decisions of the 1st respondent and that any person or entity aggrieved by the decision of the respondent has to come before the Tribunal. By the said ruling, the appellant was granted leave to appeal the Registrar's decision within 30 days of the ruling.

Proceedings in the High Court

[7] The appellant did not appeal the decision of the Registrar of the Tribunal to the chairperson of the Tribunal but filed a similar summons before the High Court on 17th June 2021. The affidavit evidence in support of the application was that the

appellant was constrained to appeal the Registrar's decision because the said appeal was to be made to the same Tribunal that had been biased towards the 1st respondent throughout the proceedings. In the premises, it would be prejudiced if it exercised its right to appeal. Thus, it became necessary for the appellant to apply to the High Court for an order to stay the proceedings in the Tribunal.

[8] It was also contended that since the petition raised issues of bias and violation of constitutional rights to a speedy and fair trial, the proceedings before the Tribunal needed to be stayed so as to avoid the appellant's appeal being determined by the appellant's accuser and counterpart. The constitutional issues raised by the appellant can not be determined by the Tribunal, thus the proceedings ought to be stayed pending the High Court's determination to avoid the Tribunal undermining the action already before the High Court. If the High Court did not stay the proceedings in the Tribunal, the appellant feared that its fundamental rights would continue to be abused and that the action in the High Court would be rendered academic and an exercise in futility.

[9] The 1st respondent's affidavit in opposition disclosed that the only recourse available to the appellant as regards the ruling of the Registrar of the Tribunal under the Tax Appeals Tribunal Act No. 1 and the Revenue Appeals Tribunal Regulations, 1998 was to appeal to the Chairperson of the Tribunal. The appellant cannot conveniently disregard the procedure laid down by the applicable law under the disguise of alleged bias and seek to launch its application for a stay of proceedings of the Tribunal before the High Court.

[10] It was also deposed that by asking the High Court to stay proceedings that are presently before the Tribunal, the appellant was actually requesting the Court to stay proceedings over which it has no jurisdiction. The proceedings which the Registrar of the Tribunal declined to stay relate to an appeal made by the appellant, to the Tribunal, from the decision of the Commissioner General under the Customs and Excise Act, Chapter 322 of the Laws of Zambia. As the law presently stands, the Tribunal has exclusive jurisdiction to hear and determine appeals from decisions of the Commissioner General under the Customs and Excise Act. A cursory perusal of the relief sought by the appellant reveals that the outcome of the

petition before the court will not in any way oust the exclusive jurisdiction of the Tribunal to hear and determine the proceedings which the Registrar of the Tribunal declined to stay.

[11] The affidavit further disclosed that if the alleged bias by the Tribunal towards the appellant is the only reason why the appellant has waived its right to appeal, the concerns of the appellant were still going to be addressed by the Supreme Court through the appeal process since the appellant has an opportunity to appeal to the Supreme Court against the decision of the Tribunal.

Consideration of the matter by the Learned Trial Judge

[12] On 9th July 2021, the learned trial judge issued an order declining the appellant's application to stay the proceedings in the Tribunal pending the determination of its petition in the High Court. She stated that the proceedings in the Tribunal should continue and upon the conclusion of the same, the appellant had the option to appeal should the matter be decided against it. The learned trial judge accordingly ordered that the proceedings in the Tribunal continue unhindered and

proceeded to issue a date for the hearing of the appellant's petition.

The grounds of appeal to this Court

[13] Aggrieved with this decision, the appellant has launched an appeal to this court on the following grounds:

[13.1] The learned High Court judge erred in law and fact when she dismissed the application for an order to stay proceedings in the Tax Appeals Tribunal pending the determination of the petition in the High Court without providing any reasons.

[13.2] The learned High Court judge erred in law and fact when she dismissed the application for an order to stay proceedings in the Tax Appeals Tribunal pending the determination of the petition in the High Court without hearing the application inter-partes and therefore, depriving the appellant of its right to reply to the 1st Respondent's affidavit in opposition to the application for an order to stay proceedings in the Tax Appeals Tribunal.

The arguments presented by the parties

[14] In support of ground one, Ms Theotis, the learned counsel for the appellant submitted in the appellant's written heads of argument, that the trial judge erred at law and fact when she dismissed the application for an order to stay proceedings in the Tribunal pending the determination of the petition in the High Court without providing any reason for such dismissal.

[15] Counsel submitted that if the judge was of the considered view that the circumstances did not warrant the granting of the stay of proceedings, she ought to have given a reasoned judgment to that effect. Our attention was drawn to the definition of 'judgment' under section 2 of the High Court Act, Chapter 27 of the Laws of Zambia which is stated to include a decree. We were also referred to the learned authors of Black's Law Dictionary, 10th Edition who state that the term 'judgment' "includes an equitable decree and any order from which an appeal lies". Counsel therefore, contended that since the order of the High Court is one from which an appeal lies as in the present case, it qualifies to be a judgment.

[16] She then went on to cite the cases of *The Minister of Home Affairs, the Attorney General v Lee Habasonda, suing on his own behalf and on behalf of the Southern African Centre for the Constructive Resolution of Disputes*[1] and *Maxwell Zenas Kambandu v Richard Henderson Peters and Others*[2] in support of her argument that the order of the High Court is devoid of the essential requirements prescribed in these cases. According to counsel, both the appellant and the 1st respondent filed their respective affidavits in support and in opposition to the

application. That it is clear from the order that there was no review of the affidavit evidence, no reference to or a summary of the arguments and no application of the law and authorities to the facts. The appellant and the 1st respondent, it was argued, raised issues of law and fact before the High Court judge which ought to have been discussed. However, the learned judge neglected to do so and therefore, the order of the court ought to be set aside.

[17] In arguing ground two, counsel submitted that the High Court judge issued a notice of hearing on 8th July 2021 returnable on 9th July 2021 for *inter partes* hearing of the appellant's application. Notwithstanding the issuance of the notice of hearing, the High Court Judge dismissed the appellant's application without allowing the appellant to respond to the 1st respondent's affidavit and arguments in opposition.

[18] To support this contention, counsel relied on the case of *Shamwana v Mwanawasa*[3] where it was stated that:

> *"It is an elementary requirement of fairness and justice that as a general rule, both sides be afforded the opportunity to be heard."*

[19] She also called in aid the case of *Zinka v The Attorney General*[4]

where this Court observed as follows:

> *"The principles of natural justice are implicit in the concept of fair adjudication. These principles are substantive principles and are two-fold, namely...and that no man shall be condemned unheard, that is, parties shall be given adequate notice and opportunity to be heard (audi alteram partem)... If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of a departure from the essential principles of justice. The decision must be declared to be no decision."*

[20] Counsel accordingly submitted that the rules of natural justice demand that parties should be given adequate notice and opportunity to be heard. However, counsel argued, the appellant was not given adequate notice when it received a notice of hearing on 8th July 2021 returnable on 9th July 2021 and it was not given an opportunity to be heard on the 1st respondent's skeleton arguments in opposition which were filed on 8th July 2021. Counsel therefore, contended that the decision of the High Court Judge ought to be declared to be "no decision" on the strength of the *Zinka* case and it should be set aside. She concluded her arguments by urging us to allow the appeal and set aside the order of the High Court Judge with costs.

[21] The 1st respondent did not file heads of argument. In the 2nd respondent's heads of argument, grounds one and two were argued together. Mr. Imasiku's brief argument was that the High Court Judge was on firm ground in dismissing the appellant's application because Order 30, rule 6A of the High Court (Amendment) Rules, 2020 empowers a Judge to determine an application by relying on the documents on record without the parties being in attendance. We were accordingly urged to dismiss this appeal with costs to the 2nd respondent.

Consideration of the matter by this court and decision

[22] The appellant's grievance in this appeal is two-fold: that the judge in the court below was wrong to dismiss the appellant's application for an order to stay proceedings in the Tribunal pending determination of the petition in the High Court without giving reasons; and without hearing the application *inter partes*.

[23] The order of the High Court Judge which has triggered this appeal is reproduced below. It is couched in the following terms:

"ORDER

I refuse to grant the order sought as I am of the considered view that the proceedings in the lower tribunal should continue and be concluded after which the Applicant can opt to appeal assuming the decision of the tribunal goes against it. I accordingly order that the proceedings in the tribunal continue unhindered. The petition will however be head inter partes on 4th August, 2021, at 10:30 hours.

I award no costs.

Leave to appeal is granted.

Dated at Lusaka this 9th day of July 2021

Signed

Elita Phiri Mwikisa
HIGH COURT JUDGE"

[24] We agree with counsel for the appellant that the order we have quoted in the preceding paragraph qualifies to be a judgment in terms of section 2 of the High Court Act. This Court succinctly set out the format or standard required of every judgment in the *Lee Habasonda*[1] case cited by counsel for the appellant. We stated as follows:

> *"We must however, stress for the benefit of the trial Courts that every judgment must reveal a review of the evidence, where applicable, a summary of the arguments and submissions, if made, findings of fact, the reasoning of the court on the facts and the application of the law and authorities, if any, to the facts. Finally, a judgment must show the conclusion".*

[25] The record shows that both parties filed affidavits containing evidence in support and in opposition to the application. The 1st respondent also filed written arguments containing

authorities. Various issues of law and fact were raised in these documents such as, whether it was appropriate for the appellant to file an application in the High Court to stay proceedings in the Tribunal instead of appealing the ruling of the Registrar to the Chairperson of the Tribunal; or stated differently, whether the appellant's application before the High Court was procedurally competent. Another pertinent issue which fell for determination by the trial judge was whether the High Court has jurisdiction to stay proceedings pending in the Tribunal.

[26] The trial judge was required to review the affidavit evidence deployed by the parties and discuss the arguments to the extent relevant, and finally make a reasoned decision. Needless to emphasise, the reasoning must not be based outside the evidence or arguments made by the parties as the trial judge purported to do in this case. Both parties raised issues of law and fact we have highlighted in the preceding paragraph which the judge neglected to discuss. It is quite obvious to us that the order made by the trial judge falls far short of the format or standard required of every judgment. On this score, we agree

with the appellant that the order made by the trial judge ought to be set aside. We therefore find merit in ground one.

[27] The record shows that the trial judge issued a notice of hearing of the appellant's application on 8th July 2021. The notice of hearing was returnable the following day on 9th July 2021. The record also shows that on the same day (9th July 2021), the judge issued her order dismissing the appellant's application without hearing the parties.

[28] The *Zinka* case cited by counsel for the appellant is very instructive. It enjoins a trial court to give parties in litigation adequate notice and an opportunity to be heard. This is the hallmark of natural justice or due process, a cardinal ingredient in any adjudicative process. Having given the parties a date of hearing, the judge violated the principles of natural justice by dismissing the application without hearing them.

[29] We therefore accept the appellant's lamentations that it was not given adequate notice when it received a notice of hearing on 8th July 2021 returnable on 9th July 2021 and it was also not given an opportunity to be heard on the 1st respondent's skeleton arguments in opposition filed on 8th July 2021.

[30] In the 2nd respondent's heads of argument, it was submitted that the High Court judge was on firm ground in dismissing the application because Order 30, r. 6A of the High Court (Amendment) Rules, 2020 empowers a judge to determine an application by relying on the documents on record without the parties being in attendance. Order 30, r 6A enacts as follows:

> *"6A. (1) Where the court is satisfied that the application can be disposed of on the basis of the documents before it, the court may determine the matter without the attendance of the parties or their advocates and shall issue a notice of the date of delivery [of the ruling].*
>
> *(2) This rule shall apply to –*
>
> *(a) an interlocutory application;*
>
> *(b) an application under Rule 11(a);*
>
> *(c) an application for the determination of questions of law or construction of documents; or*
>
> *(d) any other application as may be directed by the court."*

[31] Our understanding of Order 30, r.6A is that although a High Court judge has discretion to dispose of an application in the absence of parties or their advocates on the basis of documents before the court, the exercise of such discretion must be with the consent of the parties. In other words, a judge must engage the parties prior to or on the date of hearing, as to why in the court's opinion, a formal hearing and attendance of the parties

or their advocates may be dispensed with due to the nature of the application. The basis of the judge's opinion must be sufficiently highlighted so that the parties are satisfied that they will not be prejudiced if the judge disposed of the application based on documents only. It is only after seeking the parties' consent that a judge can safely dispose of an application on the basis of documents on the record pursuant to Order 30, r.6A.

[32 Our observations in the preceding paragraph are in consonance with the words of the Acting Chief Justice in his foreword to the JUDGES CASE MANAGEMENT DESK GUIDE (General and Commercial Divisions of the High Court) August, 2011 2nd Edition, where he states as follows:

> *"The 2020 Amendment Rules enjoin High Court Judges to manage their work as adjudicators. To borrow the words of Moore-bick, LJ in the English case of Whitecape Leisure Limited v John H. Rundle Limited [2008] EWCA civ. 429:*
>
> > *"Judges [are] now expected to take a more active role in managing and controlling proceedings [before them] than once was the case."*
>
> *Consistent with modern civil adjudication imperatives, our Amendment Rules enjoin judges to deliberatively involve counsel or litigants (when acting in person) at every stage of court proceedings."*

[33] In the present case, the record shows that the appellant's application was initially filed *ex parte*. The judge made it *inter partes* and endorsed 9th July 2021 as the date of hearing, not the date of delivery of the ruling. By notifying the parties of a date of hearing, the parties had a legitimate expectation that they would, on the appointed date, appear before the judge and make their arguments; they were not expecting to be ambushed with an order. The parties were consequently not given an opportunity to be heard in violation of the rules of natural justice. As aptly argued by counsel for the appellant, the purported order issued by the judge deserves to be declared as "no decision" at all. And we may add, it was not a product of due process. Ground two also has merit.

Conclusion

[33] In the result, we allow the appeal and set aside the order issued by the judge. We remit the matter back to the same judge for hearing and determination of the appellant's application on the merits. After an engagement with the Court during the hearing of this appeal, counsel representing the respondents properly conceded that remitting the matter back to the High Court was

most appropriate. Costs shall abide the outcome in the court below.

M. MALILA
SUPREME COURT JUDGE

R. M. C. KAOMA
SUPREME COURT JUDGE

C. KAJIMANGA
SUPREME COURT JUDGE