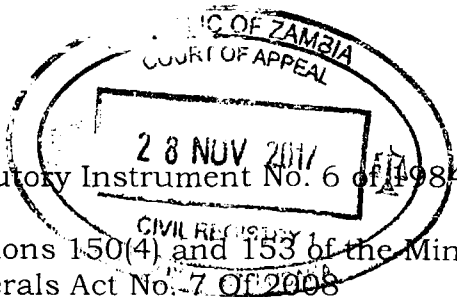


**IN THE COURT OF APPEAL OF ZAMBIA**

**CAZ/08/078/2017**

**HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*



IN THE MATTER OF: Statutory Instrument No. 6 of 1984

**AND**

IN THE MATTER OF: Sections 150(4) and 153 of the Mines And Minerals Act No. 7 OF 2008

**AND**

IN THE MATTER OF: Large Scale Prospecting Licence No. 16199-HQ-LPL

**AND**

IN THE MATTER OF: An Appeal against the Decision of the Hon.  
Minister of Mines and Minerals Development

**AND**

**BETWEEN:**

KATENGE RESOURCES LIMITED

**APPELLANT**

**AND**

AVARMMA MINING COMPANY LIMITED  
ZCCM-INVESTMENTS HOLDINGS PLC  
ATTORNEY GENERAL

**1<sup>ST</sup>RESPONDENT**  
**2<sup>ND</sup> RESPONDENT**  
**3<sup>RD</sup> RESPONDENT**

**Before Justice F. M. Chishimba in Chambers.**

For the Appellant : Mrs. P. C. Hampungani of Messrs Milner Katolo Paul  
Legal Practitioners  
For the 1<sup>st</sup>Respondent : Mrs. K. M. Chileshe of Messrs Mweemba Chashi &  
Partners  
For the 2<sup>nd</sup>Respondent : Mrs. J. Ndovi of Messrs John Kaite Legal  
Practitioners  
For the 3<sup>rd</sup>Respondent : N/A

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**R U L I N G**

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CASES REFERRED TO:

1. ***Finance Bank Zambia Limited Vs. Dimitrios Monokandilos Filandria Kouri (2012) Z.R. 484***

LEGISLATION AND WORKS REFERRED TO:

1. ***The Court of Appeal Rules, Statutory Instrument No. 65 of 2016***
2. ***The Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia***

The application by the Appellant is for leave to extend the time within which to file the record of appeal. It was made pursuant to **Order 13 Rule 3** and **Order 10 Rule 2 of the Court of Appeal Rules** as read with **Section 37 of the Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia**. The application was supported by an amended affidavit dated 27<sup>th</sup> September, 2017.

According to the supporting affidavit a notice of appeal was filed on 29<sup>th</sup> March, 2017. The Appellant sought to appeal against a Judgment of the lower Court dated 15<sup>th</sup> March, 2017. Due to the delay in the compilation of the proceedings by the Court, the Appellant could not file the record of Appeal within the requisite time. Consequently the Appellant sought and was granted an extension of time within which to file the record of appeal. The

extended time elapsed on 3<sup>rd</sup> July, 2017 which date was a public holiday.

It was stated that it was discovered that the filing clerk at the Appellant's advocates firm had not filed the record of appeal owing to the fact that he had a bereavement and had travelled. Counsel for the Appellant only discovered that the record of appeal was not filed after returning from a site visit.

On 6<sup>th</sup> July, 2017 the 1<sup>st</sup> Respondent filed into Court an application to dismiss the appeal for want of prosecution. On the same day the Appellant filed an application for leave to further extend the time within which to file the record of appeal.

By a Ruling dated 15<sup>th</sup> September, 2017 the Court dismissed the 1<sup>st</sup> Respondent's application to have the matter dismissed for want of prosecution and directed the Appellant to make a proper application as the application for extension of time had been made after the lapse of the extended time.

The 1<sup>st</sup> Respondent filed into Court an affidavit in opposition dated 2<sup>nd</sup> November, 2017. It was stated that the Appellant has failed to file its record of appeal and heads of arguments from the

time it filed its notice of appeal in March, 2017. Further, that the Appellant had failed to file the record of appeal despite the court having extended time within which to file the record of appeal on two occasions. The Court was urged to dismiss the Appellant's application with costs.

In its affidavit in reply the Appellant stated that it has demonstrated to the Court that 'circumstances' made it difficult to file the record of appeal. Further, that the Respondents will not suffer any prejudice should the Court grant the sought order. In addition, that the record of appeal is currently ready for filing.

When the matter came up for hearing Counsel for the Appellant while referring to the case of ***Finance Bank Zambia Limited Vs. Dimitrios Monokandilos Filandria Kouri*** <sup>(1)</sup> submitted that what constitutes inordinate delay is a question of fact to be resolved on the facts of each particular case. Counsel further argued that a day's delay cannot amount to inordinate delay.

In the above aforementioned ruling I had granted the Applicant herein leave to file the application for extension of time

within which to file the record of appeal out of time within 14 days. The Applicant accordingly filed the application for extension of time.

I have carefully considered the application by the Appellant for leave to extend the time within which to file the record of appeal.

**Order 13 Rule 3(1) (a) and Rule 3 (3) of the Court of Appeal Rules Statutory Instrument No. 65 of 2016** empowers the Court to extend the time for taking any step in connection with an appeal.

**Order 13 Rule 3 (3) of the Court of Appeal Rules** specifically stipulates that;

***“The Court may for sufficient reason extend time for making an application, including an application for leave to appeal, or for bringing an appeal, or for taking any step in or in connection with any appeal, despite the time limited having expired, and whether the time limited for that purpose was so limited by the order of the Court, by these Rules, or by any written law.”***

The record will show that that the Appellant was granted an extension of 14 days within which to file the record of appeal out of time. It is not in dispute that the Appellant failed to file the record of appeal within the extended time. The extended time elapsed on 3<sup>rd</sup> July, 2017. The 3<sup>rd</sup> and 4<sup>th</sup> of July, 2017 were public holidays. The record will further show that on 6<sup>th</sup> July, 2017, the Appellant

lodged an application for extension of time within which to file the record of appeal out of time. In my Ruling dated 15<sup>th</sup> September, 2017 I directed the Appellant to make a proper application for leave to file the record of appeal out of time as the same was not properly before the Court. Hence this application by the Appellant.

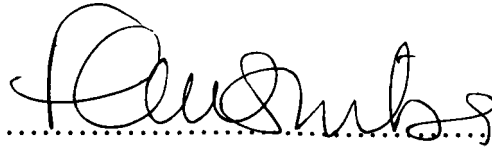
The issue, in my view, is whether the delay by the Appellant in filing the record of appeal is inordinate and prejudicial to the 1<sup>st</sup> Respondent.

The record will show that the initial reason advanced by the Appellant for its failure to file the record of appeal is the fact that there had been a delay in compiling the record of proceedings in the court below. Further, after the Appellant failed to file the record of appeal by 3<sup>rd</sup> July, 2017 an application was made to extend the time within which to file the record of appeal.

I am of the view that there was no inordinate delay by the Appellant to lodge an application to file the record of appeal out of time; albeit the initial application was not properly before the Court. I am of the further view that the Respondents would not be prejudiced should the Appellant be granted the sought order.

For the foregoing reasons, I accordingly order that the Appellant do file the Record of Appeal together with the heads of arguments within 7 days from date hereof, failure to which the appeal shall stand dismissed for want of prosecution.

**Dated the 28<sup>th</sup> day of November, 2017.**



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Hon. Mrs. Justice F. M. Chishimba  
**COURT OF APPEAL JUDGE**