

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

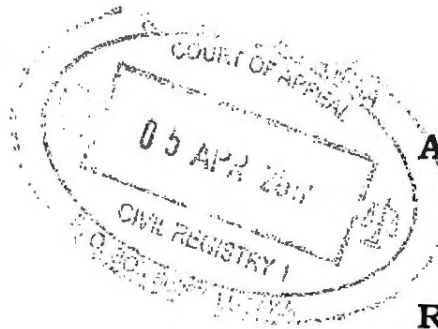
**CAZ/08/102/2016**

**BETWEEN:**

**NOOR MOTORS LIMITED**

**AND**

**FELISTERS SAKUWAHA**



**APPELLANT**

**RESPONDENT**

**Before the Hon. Mrs. Justice J.Z. Mulongoti**  
**on the 5<sup>th</sup> day of April, 2017.**

*For the Appellant:*  
*For the Respondent:*

*Mrs. S. Chisanga - Miti of KMG Chisanga Advocates*  
*Mr. M. J. Katolo of Milner & Paul Legal Practitioners*

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## **R U L I N G**

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**Legislation referred to:**

1. Court of Appeal Rules Statutory Instrument No. 65 of 2016

This is an application for extension of time to file the Record of Appeal. The application is made pursuant to Order XIII rule 3(3) of the Court of Appeal Rules by Notice and supporting affidavit deposed to by Sharon Chisanga Miti an advocate of Messrs KMG Chisanga Advocates, who are

representing the appellants. Learned counsel deponed that in accordance with the Rules of Procedure of the Court of Appeal, the Record of Appeal and Heads of Argument are required to be filed sixty days from the date of filing the Notice of Appeal and Memorandum. That on 7<sup>th</sup> December, 2016 the appellant filed the Notice of Appeal and Memorandum. However, that the transcript of proceedings in the High Court is not ready and thus delayed the preparation of the Record of Appeal. That the Marshal to Honourable Mr. Justice Mweemba who is assisting with the preparation of the transcript has indicated that it would not be ready by 6<sup>th</sup> February, 2017 the date when the sixty days expire. Accordingly, the appellant seek the court's indulgence to grant the order for extension of time within which to file the Record of Appeal by at least another forty five days. The appellant also filed a list of authorities and skeleton arguments, which I shall refer to where necessary.

The respondent filed an affidavit in opposition deponed by her counsel, Milner Joseph Katolo of Messrs Milner and Paul legal Practitioners. He deposed *inter alia*, that the appellant has not exhibited any proof of the contents of paragraphs 7, 8 and 9 of the affidavit in support to buttress the allegations that the transcript of proceedings would not be ready by the 6<sup>th</sup> of February, 2017 when the sixty days expired. That the reasons

advanced by the appellant are frivolous as it had enough time to obtain the Judge's notes for purposes of lodging the Record of Appeal. The Court's only obligation towards the appellant is with regards to availing them with notes of the proceedings which are available. The Court was urged not to entertain the application or alternatively condemn the appellant in costs that must be paid before another step is taken because the request for another forty five days as stated is inordinate and no justification cause has been demonstrated. He further deposed that the appellant is putting the respondent to great expense by its conduct which the court should not condone as the law in providing for sixty days to file the Record of Appeal recognised the expedience attached to appeals.

At the hearing of the application on 15<sup>th</sup> March, 2017, the appellant's counsel relied entirely on the affidavit in support. The respondent's counsel Mr. Katolo, also relied on the affidavit in opposition and skeleton arguments. He submitted that Order XIII rule 3(3) pursuant to which the application for extension of time has been made, has a caveat to it as provided by rule 3(2) of the same Order XIII which provides that an extension of time should be made twenty one days after judgment, if not leave must be obtained, to file out of time. That the caveat was not complied with as the appellant filed this application to extend time forty

days after judgment and without leave of the Court. Thus, the application is irregularly before Court and cannot be entertained.

It was argued, in the alternative, that if the Court is inclined to exercise discretion and grant the application, the Court should issue an unless order for the record to be filed within seven days failing which the appellant be condemned in costs.

In reply, Mrs. Miti, submitted in relation to the first part of order XIII rule 3(2) that it would have been invoked if the Record of Appeal had been filed after expiration of sixty days. That in relation to the Judgment it would have been invoked if the Notice of Appeal had been filed after twenty one days. Whereas regards the second part, the appellant made the application to extend on 3<sup>rd</sup> February, 2017 which is the fifty eighth day. Thus it has complied with Order XIII rule 3(3) by which an extension is sought.

Regarding the alternative prayer, she contended that seven days would be unreasonable given the circumstances. She also objected to the order for costs sought by the respondent, on the ground that the delay was not occasioned by the appellant.

Let me state that I am inclined to allow the application. I note that Order XIII rule 3 (2) and (3) provide that:

**"(2) An application to the Court for extension of time in relation to a Judgment or the date of expiration of the time within which the application ought to have been made, shall be filed in the registry within twenty one days of the judgment or such time within which the application ought to have been made, unless leave of the Court is sought to file the application out of time.**

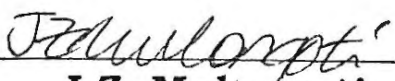
**(3) The Court may, for sufficient reason, extend time for making an application, including an application for leave to appeal, or for bringing an appeal, or for taking any step in or in connection with any appeal, despite the time limited having expired, and whether the time limited for that purpose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

As submitted by Mrs. Miti, rule 3(2) of Order XIII would have been invoked if the Record of Appeal had been filed after the expiration of sixty days, and in relation to the Judgment it would have been invoked if the Notice of Appeal had been filed after twenty one days of the Judgment.

In *casu*, the appellant already filed the notice of appeal in time. The appellant now seeks to file the Record of Appeal beyond the sixty days prescribed by the Rules. This is due to the proceedings of the court below, which are an integral part of the Record of Appeal, not being ready as deposed to in the affidavit in support. As argued by Mrs. Miti, this application was made on the fifty eighth day before expiry of the sixty days, pursuant to Order XIII rule 3(3). I am of the firm view that the application is properly before me. Having considered the ground advanced for the failure to comply with the Rules by filing within sixty days, I opine that it is sufficient reason for me to extend the time. However, I am alive to the opposing arguments by the respondent that the forty five days extension sought by the appellant is unjustified. I therefore, grant the application for extension of time and order that the Record of Appeal be filed within twenty one days from today.

Costs in the cause.

Delivered at Lusaka this 5<sup>th</sup> day of April, 2017.

  
**J.Z. Mulongoti**  
**Court of Appeal Judge**