

**IN THE COURT OF APPEAL OF ZAMBIA**

**NOM 61/2018**

**HOLDEN AT LUSAKA**

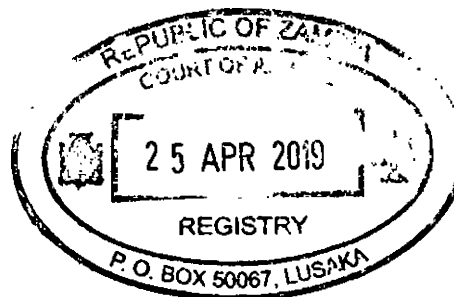
*(Civil Jurisdiction)*

**BETWEEN:**

**BRIGHT SHIYENGE**

**AND**

**ANGELA MWILA BWEMBYA**



**APPELLANT**

**RESPONDENT**

**CORAM: CHASHI, LENGALENGA AND SIAVWAPA, JJA**

**On 15<sup>th</sup>, 27<sup>th</sup> March and 25<sup>th</sup> April 2019**

**FOR THE APPLICANT: IN PERSON**

**FOR THE RESPONDENT: MRS B.M.MULENGA OF LEGAL AID  
CLINIC FOR WOMEN**

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## **RULING**

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**SIAVWAPA, JA, delivered the Ruling of the Court.**

**Cases Cited:**

1. Nahar Investment Limited v. Grindlays Bank International(Zambia) Limited (1984) Z.R. 11 Reprint P.99
2. Access Bank (Zambia) Limited v Group Five/ZCON Business Park Joint Venture SCZ/8/52/2014

**Legislation cited:**

1. Court of Appeal Rules, 2016

This Notice of Motion arises from a ruling of a single Judge of this Court delivered on 26<sup>th</sup> October, 2018.

The motion seeks for an order to reverse the ruling of the single Judge by which the Judge dismissed the Applicant's appeal on account that there was inordinate delay to file the record of appeal upon insufficient grounds.

The Applicant, aggrieved by the ruling of the Judge, has raised three grounds of appeal as set out in the affidavit in support. We however, note that the real issue he is pushing is that his appeal ought to be determined on its merits rather than it being dismissed on a technicality.

In the instant matter, the Applicant, having filed the Notice and Memorandum of Appeal on 27<sup>th</sup> April 2017, has not filed the Record of Appeal to date. This means that as at the filing of the summons to dismiss the matter for want of prosecution on 25<sup>th</sup> July 2018, the Applicant herein had delayed filing the Record of Appeal for one year three months.

**Order X Rule 6 of the Court of Appeal Rules** provides for the filing of the record of Appeal and the Heads of Argument within sixty days of the filing of the Notice and Memorandum of Appeal unless there is an application pursuant to Order XIII rule 3 of the Rules of the Court.

This length of delay can be nothing but excessively inordinate as rightly found by the Judge given the lack of satisfactory reasons for the said delay.

The Judge relied on the case of **Nahar Investment Limited v Grindlays Bank International Limited (1)** where the Supreme Court stated inter alia:

**“Applicants who sit back until there is an application to dismiss their appeal before making their own frantic application for extension, do so at their own peril.”**

The Applicant states that his obstacles cannot be proven before this Court but it is trite that all allegations before the Court must be proven. Failure to do so is fatal to the Application.

In the case of **Access Bank (Zambia) Limited v Group Five/ZCON Business Park Joint Venture (2)** the Supreme Court reaffirmed the position that matters should be determined on their merits rather than on technicalities and further stated that:

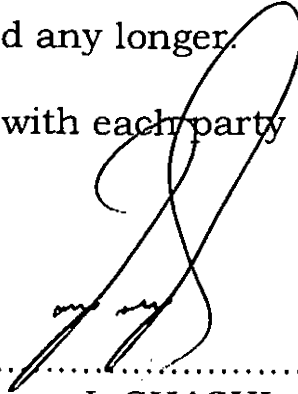
**“Justice requires that this court, indeed all courts, must never provide succor to litigants and their counsel who exhibit scant respect for rules of procedure. Rules of procedure and timeliness serve to make the process of adjudication fair, just, certain and even -handed. Under the guise of doing justice through hearing matters on their merit, courts cannot aid in the bending or circumventing of these rules and shifting goal posts, for while laxity in**

**application of the rules may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules.”**

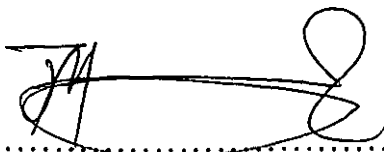
We find that the Applicant has shown laxity towards the rules of this Court as the time within which he has failed to file the record of appeal has caused an inordinate delay in the conclusion of this matter.

During the time that the Applicant has delayed this matter, the Respondent has not received maintenance. The Respondent has been denied the enjoyment of the judgement in her favour as such she should not be delayed any longer.

The motion is dismissed with each party to bear their own costs.



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J. CHASHI  
**COURT OF APPEAL JUDGE**



.....  
F.M. LENGALENGA  
**COURT OF APPEAL JUDGE**



.....  
M. J. SIAVWAPA  
**COURT OF APPEAL JUDGE**