

**IN THE HIGH COURT FOR ZAMBIA  
AT THE COMMERCIAL REGISTRY  
HOLDEN AT LUSAKA**

**2012/HPC/0675**

(Commercial Jurisdiction)

**IN THE MATTER OF:** An application for vacant possession and sale of Stand No. 896 situate in the Lusaka Province of the Republic of Zambia

And

**IN THE MATTER OF:** Order 30 Rule 14 of the Rules of the High Court, Chapter 27 of the Laws of Zambia

**And**

**IN THE MATTER OF:** Order 88 Rule 1 of the Supreme Court Rules of England, Supreme Court Practice (White Book) Vol. 1. 1999 Edition

**BETWEEN:**

FINANCE BANK ZAMBIA LIMITED

**APPLICANT**

**AND**

BETRICH INVESTMENTS LIMITED

**1<sup>ST</sup> RESPONDENT**

BETTY CHIZYUKA

**2<sup>ND</sup> RESPONDENT**

RICHARD CHIZYUKA

**3<sup>RD</sup> RESPONDENT**

**BEFORE THE HON. MR JUSTICE JUSTIN CHASHI IN  
CHAMBERS ON THE 17<sup>TH</sup> DAY OF MARCH, 2015**

*For the Applicant:*

*M K Mwanawasa (Dr) Messrs Levy Mwanawasa & Co.*

*For the Respondents: G. Lungu, Messrs Mulezya Mwiimbu and Company*

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## **J U D G M E N T**

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### **Legislation referred to:**

- The Supreme Court of Zambia Act, Chapter 25 of The Laws of Zambia

Judgment in this Cause was delivered in favour of the Applicant against the Respondents on the 21<sup>st</sup> day of July 2014.

The Respondents on the 21<sup>st</sup> day of November 2014 filed an application for leave to appeal out of time pursuant to **Rule 50 (1) of the Supreme Court Rules**. The application is supported by an affidavit of even date deposed to by the 3<sup>rd</sup> Respondent and Skeleton arguments.

According to the said affidavit, the Respondents being not satisfied with the whole Judgment of the Court could not appeal in time due to the fact that their Financial Consultant who is based in Zimbabwe had an assignment in Namibia for the past three months preceding the application and they could not reach him on his mobile phone or any other means.

The Respondents have exhibited to the said affidavit copy of their intended Memorandum of Appeal containing ten grounds of appeal.

The Respondents have contended in their Skeleton arguments that the Respondents have a high prospect of succeeding on the

appeal and prayed that the Court grants the application and that costs be in the cause.

The Applicant has opposed the application by filing an affidavit in opposition deposed to by Jane Bota Karima the Assistant Director of Credit in the employ of the Applicant. In addition they filed Skeleton arguments and further Applicants Skeleton arguments.

The main averment in the affidavit in opposition is that the application by the Respondents is an abuse of the Court process meant to buy time and delay the payment due to the Applicant and deny the Applicant the fruits of its Judgment.

I have taken into consideration the affidavit evidence herein and the Skeleton arguments by both parties in determining this matter.

The primary concern of the Court in the granting of the application out of time is to probe into the reasons advanced for the delay.

I have taken note of the reason advanced for the delay and I have found it to be plausible. I also note that the application has been made within a reasonable time.

Although, this Court had conduct of the matter and delivered the Judgment herein, I will give the Respondents a benefit of doubt on the high likelihood of the appeal succeeding and grant the application for leave to appeal out of time on condition that the

Notice of Appeal and the Memorandum of Appeal are filed within fourteen (14) days from the date of this Order.

This Order will pursuant to **Rule 51 of The Supreme Court Rules** not act as a stay of execution.

In any case, the Respondents have not asked for a stay of execution and as such I will not entertain any application in that respect.

**Costs of this Application are to the Applicants.**

**Leave to appeal is hereby granted.**

**Delivered at Lusaka this 17<sup>th</sup> day of March 2015.**

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Justin Chashi  
**HIGH COURT JUDGE**