

IN THE HIGH COURT FOR ZAMBIA
AT THE LUSAKA PRINCIPAL REGISTRY

2015/HP/453

(Civil Jurisdiction)

BETWEEN:

KAPUNGWE NCHITO

WILLIAM PHIRI

AGGREY CHIMULU

MUKOLOBA MWANSA

CHARLES CHANGANO

**ELEAZER RABINDRANATH PILLAI
DURAIRAJAN**

AND

**THE COUNCIL OF THE ZAMBIA INSTITUTE
OF ADVANCED LEGAL EDUCATION**

1ST APPLICANT

2ND APPLICANT

3RD APPLICANT

4TH APPLICANT

5TH APPLICANT

6TH APPLICANT

RESPONDENT

Before The Honourable Mrs. Justice J.K.Kabuka in Chambers, The
30th day of October, 2015.

FOR THE 6TH APPLICANT: Mr. R. Peterson, Messrs. Chibesakunda &
Co.

FOR THE RESPONDENT: Mr. L. Linyama, Messrs. Eric Silwamba,
Jalasi & Linyama-Legal Practitioners.

RULING

Case and Legislation referred to:

1. Robert Lawrence Roy vs Chikataka Ranching Company Limited
(1980) Z.R.198 (HC).

The High Court Rules Cap 27 Order 39 (2).

The 6th Applicant applies for special leave to review a judgment of this Court on grounds that he only became aware of the same long after it had been delivered. This ruling is on that application.

The background to the matter is that, by judgment delivered on 27th March, 2015 this Court declined to grant the Applicant's application in which he was seeking orders declaring that, after thrice unsuccessfully attempting to qualify as a Legal Practitioner; and serving the consequential five year bar, he was not required to:

- (i) re- enrol as a student with the Respondent's institution for Advanced Legal Education; and**
- (ii) re-sit all the courses including the Heads, in which he had previously passed.**

The application for special leave of this Court to review its said judgment was filed on 6th May, 2015. In his affidavit in support, the Applicant contends, he only became aware of the Court's judgment on 23rd April, 2015 which was long after the 14 day period within which an application for review of a judgment can be brought as provided by O.39 (1) of the High Court Rules. The application is brought pursuant to O.39 (2) of the High Court Rules.

There was no affidavit filed in opposition to the application.

When the matter came up for hearing, Counsel for the Applicant relied on the affidavit in support of the application, the substance of which was that, he only became aware of the court's judgment on 23rd April, 2015 which was long after the 14 day period within which an application for review of a judgment can be brought.

In response to that argument, Learned Counsel Mr. Linyama's arguments were to the effect that, the jurisdiction of the court under

O.39 requires that there must be sufficient grounds disclosed to warrant such a review. That such leave is not given unless (i) there is discovered material evidence which would have had material effect upon the decision of the court (ii) that this evidence has been discovered since the decision; and (iii) it could not with reasonable diligence, have been discovered before. The case of **Robert Lawrence Roy vs Chitakata Ranching Company Limited (1)** was cited as authority for the submission. Mr. Linyama went on to submit, that perusal of the Applicant's affidavit in support of the application, shows the fresh evidence relied upon for seeking review has not been particularised for the court to determine that it is material. Neither has the Applicant demonstrated that a diligent search had previously been embarked upon for this evidence, but had failed.

In his brief reply on behalf of the Applicant, Mr. Peterson submitted, the requirements outlined by Mr. Linyama must be met in the substantive application for review. The application now before this Court is merely for leave and as such is not an application for review. That all the Applicant is required to demonstrate to the satisfaction of the court at this stage, is the reason he failed to make the application within the permitted fourteen (14) day period. Counsel urged this Court to find the Applicant had discharged the onus and grant him the leave sought.

I have considered the Applicant's affidavit evidence in support of the application. I have also considered arguments by Learned Counsel on both sides, as well as the law relied on. I accept this application is indeed one for leave only. I also find the main issue arising for determination of this court is whether the Applicant has advanced justifiable reasons for seeking leave for review of judgment, after (14) days.

Order 39 rule 2 of the High Court Rules relied upon for bringing the application states as follows:

“2. Any application for review of any judgment or decision must be made not later than fourteen days after such judgment or decision. After the expiration of fourteen days, an application for review shall not be admitted, except by special leave of the Judge on such terms as seem just.”

I have considered the reasons for seeking review as outlined in paragraphs 4 and 5 of the affidavit in support stating that, the Applicant only became aware of the judgment after the time for review had lapsed. Suffice to note, that review of judgment should be considered in exceptional cases, if there is to be any finality to litigation. I find, if that objective is to be ever met, then reasons such as the one given by the Applicant should not be entertained.

Leave for review is accordingly, declined.



J. K. K A B U K A

JUDGE