

**IN THE HIGH COURT FOR ZAMBIA  
INDUSTRIAL RELATIONS DIVISION  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)**

**APP/IRCLK/225/2017**

**BETWEEN:**

**TWAAMBO KALENGA CHIRWA**

**AND**

**AFRICA BANKING CORPORATION ZAMBIA LIMITED**

**RESPONDENT**



**CORAM:**

**Hon. E. MWANSA Esq : JUDGE**

**APPEARANCES:**

For the Complainant : **Ms. Mwaba Of Messrs Scm Legal Practitioners**

For the Respondent : **Ms. N Alikipo Of Messrs Simeza Sangwa and Associates**

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**JUDGEMENT**

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**Legislation Referred to:**

- 1. Industrial and Labour Relations Act Chapter 269 of the Laws of Zambia**
- 2. Constitution of Zambia (Amendment) Act No.2 of 2016, Chapter 1 of the Laws of Zambia**



**Cases Referred to:**

- 1. *Zambia Consolidated Copper Mines Ltd -V- Matale S.C.Z. Judgment No. 9 of 1996***
- 2. *Hakainde Hichilema and Another -V- Edgar Chagwa Lungu and Others 2016/CC/0034***

This is an Appeal against the Learned Deputy Registrar's ruling of 6<sup>th</sup> July, 2018. The Respondent filed its heads of arguments in support of appeal to a Judge in Chambers on 24<sup>th</sup> August, 2018. The Complainant filed her heads of arguments on 28<sup>th</sup> January 2019 and the Respondent was served on the same date.

In spite of the matter being on appeal the parties shall maintain their respective designations as Complainant and Respondent to avoid any misunderstanding.

In ground one, the Respondent argues that the Learned Deputy Registrar erred in law and in fact when he held that the question he had to ask himself was whether a default of two days is an inordinate period.

In response, the Complainant argued that the Court did not stray as alleged by the Respondent but collectively adjudicated on the matter before it. She submitted that the Court was just reminding the parties the spirit in which they entered the Consent Order and that the Deputy Registrar did address the question of illegality in his ruling.



In reply, the Respondent insisted that the question before the Deputy Registrar was whether the Complaint was filed out of time and having answered this in the affirmative the only recourse was to dismiss the Complaint. They argued that he should not have framed and determined a question on inordinate delay which was not raised before him. Furthermore, with regard to whether the Deputy Registrar addressed the question of illegality, the Respondent submitted that the Complainant misconstrued the essence of ground one which raised the issue that the Court answered the question whether or not there was inordinate delay.

In ground two, the Respondent argued that the Learned Deputy Registrar erred in law and in fact when he held that the default was curable. The Complainant submitted in response that the Respondents voluntarily agreed that the Complaint be brought before Court out of time by signing the Consent Order thus the illegality being advanced on appeal should have been brought before signing the Consent Order. She submitted further that owing to the Consent Order the matter was res judicata and the Consent Order could only be challenged on appeal and the delay in filing the Complaint within the period provided in the Consent Order was a technicality that does not render the Complaint void. In reply, the Respondent argued that section 85(3) of the Industrial Relations Act is couched in mandatory terms that a complaint should be filed within a specific time frame. However, a Complainant can make an application for extension of time. They further argued that compliance with any order of court extending time in which a complaint is filed is also mandatory. Therefore, the



seven days provided in the order was not complied with thus the complaint was not legally before court.

In ground three, the Respondents argued that the Learned Deputy Registrar erred in law and in fact when he dismissed their application to dismiss the action. In response, the Complainants argued that since the aim of the Industrial Relations Court is to deliver substantial justice the Learned Deputy Registrar was correct to hold that the two days' delay was not inordinate and that it was in the interest of substantial justice to dismiss the Respondent's application.

In response, the Respondents stated that it is agreed that the Industrial Relations Court is a court of substantial justice however the justice in question relates to both parties. They submitted that the Court must consider the interests of both parties.

Regarding ground one, my position is that it is clear from both parties' submissions that the Consent Order stipulated that the Complaint should have been filed within 7 days. However, the Complainant filed the Complaint 2 days late as admitted by them. The effect of this is that the I now must decide if this delay meant the complaint was illegally before court or if it only amounted to a delay that was not inordinate. In dealing with this question it is important to determine whether this delay is fatal to the Complainant's case.



Rule 47 of the Industrial and Labour Relations Act provides that:-

***“The time prescribed by these Rules or by order of the Court for doing any act may be extended (whether it has already expired or not) or abridged, and the date appointed for any purpose may be altered, by order of the Court.”***

It is sufficiently clear from the foregoing provision that this Court has power to extend time prescribed by order of court for doing something, in instances where such time has expired.

As can be noted from the circumstances surrounding the case the delay of 2 days cannot be fatal to this case therefore we agree with the Learned Deputy Registrar and the first ground of appeal fails.

Regarding ground 2, my position on whether the default by the Complainant was curable or not is related to rule 47 cited above. The court has power to extend time therefore a delay of 2 days cannot be fatal. Therefore, even though the Complaints did not comply with the Consent Order the rules allow this Court to extend time prescribed in a Court Order. This ground of appeal also fails. With regard to ground 3, my position on the Deputy Registrar's decision to dismiss the Respondent's application relates to the power of the Industrial Relations Court to do substantial justice as provided for in the Industrial Relations Act.



Section 85 (5) of the Industrial Relations Act provides that: -

***“The Court shall not be bound by the rules of evidence in civil or criminal proceedings, but the main object of the Court shall be to do substantial justice between the parties before it.”***

The foregoing underscores the importance that is attached to having matters heard on their merits and not dismissed prematurely.

In the decision of ***Zambia Consolidated Copper Mines Ltd -V- Matale*** the Supreme Court stated *inter alia* that: -

***“The mandate in subsection 5 which required that substantial justice be done does not in any way suggest that the Industrial Relations Court should fetter itself with any technicalities or rules.”***

The combined effect of the foregoing authorities emphasises the point that this Court should carry out its mandate of dispensing justice without allowing technicalities or rules to fetter it.

We concede that it is correct as submitted by the Respondents that justice should be administered in the interest of both parties. However, because both parties had agreed that the Complaint be filed, a delay of two days does not prejudice the interests of the Respondents who were already in agreement that this filing should be done.



With regard to the argument that this Court should not pay undue regard to procedural technicalities the Respondent argues that the Complaint being filed out of time goes to the jurisdiction of the Court. The question is therefore whether the actions of the Complainant amounted to flouting procedural requirements or to ousting the Court's jurisdiction.

Article 118 (2) (e) of the Constitution of Zambia has been relied on in the submissions. It provides that: -

***“Justice shall be administered with undue regard to procedural technicalities”***

The case of ***Hakainde Hichilema and Another -V- Edgar Chagwa Lungu and Others*** has been relied on as well to explain the application of Article 118(2) (e) of the Constitution as dealing with undue regard to procedural requirements and that it does not deal with jurisdictional irregularities.

As helpful as these authorities are it is always important to remind ourselves that the Industrial Relations Court sits in a peculiar position in relation to other Courts when it comes to jurisdiction which is provided for in the Industrial Relations Act. In as much as the Respondents argue that there was a requirement for leave and it goes to the jurisdiction of the Court, the Industrial Relation Act itself in Section 85(5) read together with rule 47 as already cited above allows the Court to extend time in circumstances



similar to the present case. There was therefore no need to seek leave under the said circumstances. This is therefore not a case of jurisdictional irregularity hence the third ground of Appeal also fails.

I make no Order as to costs.

Dated this.....day of ....., 2019.

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**E. MWANSA**  
**JUDGE**

