

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA

2017/HP/1577

(Civil Jurisdiction)

BETWEEN:

GREENFORD KAYEYE

PLAINTIFF

AND

NATIONAL BREWERIES PLC

DEFENDANT



**BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO,
IN CHAMBERS, ON THE 18TH DAY OF MAY, 2020.**

For the Plaintiff: N/A

For the Defendant: N/A

RULING

CASES REFERRED TO:

1. *Fanny Muliango and Samson Muliango Vs Namdou Magasa and Muruja Transport and Farming P. 209*
2. *Stanely Mwambazi Vs Morester Farms Limited (1977) ZR 108*
3. *Lloyd Davies Vs Lloyd Davies (1947) 1 ALL ER*
4. *Nahar Investments Limited Vs Grindlays Bank International (Zambia) Limited (1984) ZR 81 SC*

LEGISLATION REFERRED TO:

1. *The High Court Act, Chapter 27, Volume 3 of the Laws of Zambia.*

1 INTRODUCTION

1.1 This is the Plaintiff's *Ex Parte* application for leave to appeal out of time pursuant to **Order III, Rule 2** of **The High Court Rules**¹.

1.2 Upon considering that Zambia is currently faced with Covid-19, a global pandemic which demands social distancing and that this is a matter which can be disposed of on Affidavit evidence whilst adhering to the social distancing guidelines given by the relevant government authorities, I have thus dispensed with hearing submissions *viva voce* and rendered this Ruling based on the Affidavit evidence.

2 BACKGROUND

2.1 It is pertinent to briefly outline the facts leading to this application for leave. The Plaintiff had commenced this action on 13th September, 2017, by way of Writ of Summons and Statement of Claim against the Defendant, which process was amended on 20th September, 2017. The claim is for payment of the sum of K500,000.00 for the unlawful and unfair termination of employment against the Defendant and damages for injury during the course of work amounting to K200,000.00.

2.2 On 23rd October, 2019, I delivered Judgment, in which the Plaintiff's claims partially succeeded. The Plaintiff being dissatisfied with the Judgment, applied for leave to appeal out of time on 16th March, 2020, which is five months after the Judgment was delivered.

3 AFFIDAVIT EVIDENCE

3.1 The application is supported by Affidavit deposed to by the Plaintiff, in which it is averred *inter alia* that the

Court did not grant leave to appeal in the Judgment and in the absence of such leave, he is not able to appeal the Judgment. It is further averred that the Plaintiff could not seek leave to appeal within the prescribed time as he lost his employment and did not have money to pay for his legal fees.

4 THE LAW, ANALYSIS AND FINDINGS

- 4.1 I have considered the Plaintiff's application and the reasons he has advanced for the delay in seeking leave to appeal out of time.
- 4.2 The application is brought pursuant to **Order III, Rule 2 of The High Court Rules**¹, which gives discretionary power to the Court to grant any order in the interest of justice. The said Order is couched as follows: -
- "Subject to any particular rules, the Court or a Judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not."*
- 4.3 It is trite law that a party to the proceedings has within thirty days from the date of Judgment to appeal, if dissatisfied with the Judgment. The circumstances under which an application for leave to appeal out of time can be granted are where the Applicant satisfies the Court that the delay was not inordinate and shows that the unfair prejudice that will be caused if the application is not allowed. Further the law states that the Applicant must show the appeal has merits and

the exceptional circumstances to warrant the granting of the Leave to Appeal out of time.

- 4.4 As stated above, the Applicant must provide sufficient reasons for bringing the application late. In dealing with this application, I have perused the Affidavit evidence presented before me. I delivered the Judgment on 23rd October, 2019 and from the record it is shown that the Summons for Leave to Appeal out of time was filed on the 16th of March, 2020. The reason advanced was that the Applicant lost employment arising from non renewal of his contract and thus had no money to pay for his legal fees. He exhibited a letter of non renewal of contract marked "GK 2", which is dated 30th November, 2019 and states that his benefits would be paid immediately.
- 4.5 First of all, the fact that the Applicant had no money to pay for his legal fees, is in my view, immaterial. Even if the Applicant had no money to retain Counsel, it was his duty to follow up on the case by lodging a Notice to Appeal. It is my considered view that no plausible explanation has been rendered as to why it took such a long period of time before any action was taken. In any case, Applicant lost his job more than a month after Judgment was delivered herein. It is my finding that there was nothing that prevented the Applicant from filing a notice of appeal within the stipulated time while putting funds together to retain Counsel. His failure to react until after almost five months is

indicative that he had gone to sleep on his rights and is inordinate delay. I also find that the inordinate delay on the part of the Applicant clearly display lack of seriousness on his part.

4.6 For the foregoing reasons, I find that there was inordinate delay by the Applicant in pursuing the application for leave to appeal out of time. I am fortified by the Case of ***Nahar Investments Limited vs. Grindlays Bank International (Zambia) Limited***¹, where it was held that: -

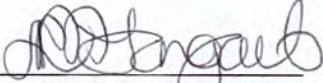
"...in the event of inordinate delay or unfair prejudice to a Respondent, the Appellant can expect the appeal to be dismissed."

5 CONCLUSION

5.1 I certainly do not find any sufficient reasons to allow this application, which has not been made within reasonable time. Accordingly, the application for Leave to Appeal out of time is hereby dismissed for lack of merit.

5.2 Leave to Appeal granted.

Delivered on the 22nd day of May, 2020.


P. K. YANGAILO
HIGH COURT JUDGE