

IN THE SUPREME COURT FOR ZAMBIA

SCZ NOS. 8 AND 57 OF 1996

HOLDEN AT NDOLA

(CIVIL JURISDICTION)

B E T W E E N :

THE ATTORNEY GENERAL

APPELLANT

AND

JOHN LAMBI AND FRANK MAFUTA

RESPONDENT

CORAM: NGULUBE, CJ., SAKALA AND MUZYAMBA, JJS

On 4th March and 2nd June, 1998

For the Applicant - R.O. Okafor, Principal State Advocate

For the Respondent - A.M. Mushingwa, Chali Chama and Company

J U D G M E N T

NGULUBE, CJ., delivered the judgment of the Court.

On 4th March 1998 when we heard this application, we refused to grant it and said we would give our reasons later. This we now do.

The Attorney-General was desirous of appealing a judgment given in favour of the respondents which we understand was for the payment of damages for wrongful dismissal. In terms of the law and practice in this jurisdiction, they could appeal as of right within thirty days and in fact lodged the necessary notice of appeal. The record of appeal had to be lodged within sixty days and this they did not do. According to the affidavits, the notice of appeal was filed on 29th March, 1996 and the record of appeal should have been lodged within sixty days thereafter, unless the time for doing so was extended by the court. In typical fashion of a lot of appellants, the appellant did not meet the deadline for the lodging

of the record of appeal and made no application for an extension of time. The respondents applied to dismiss the appeal for want of prosecution on 2nd September 1996. It was in the course of resisting that application when the appellant disclosed in an affidavit that the record of appeal was in fact ready whereupon the court made an “unless” order: The appeal would automatically stand dismissed unless the record was filed within the twenty-one days’ extension which was granted on 6th March, 1997.

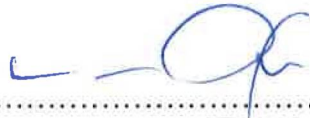
Appellants who ignore an “unless” order of this kind do so at their own peril since the order takes effect unless before the expiry of the period fixed another application has been made and is granted to further enlarge the time. It is only in very exceptional circumstances that the automatic dismissal may be set aside in the interests of justice to prevent a possible grave injustice. In this case, the explanation offered was that counsel dealing with the matter went on leave and his request to those responsible in the Attorney-General’s Chambers to lodge the records forwarded to them went unheeded. There is nothing exceptional in this explanation to displace the equally important consideration that litigation must have an end. There was also inordinate delay in trying to make this application which was lodged on 23rd October 1997.

We can do no better than to draw attention once again to what this court said in **NKHUWA -v- LUSAKA TYRE SERVICES LTD (1977)ZR 43** when we said at page 47---

“It is a regrettable fact that in recent years legal practitioners in this country have approached the need to comply with the rules as to time with complete nonchalance. This court has had occasion in the past to comment adversely on the attitude of legal practitioners to compliance with other rules of procedure but it is time that all legal practitioners were made to understand that where the rules prescribe times within which steps must be taken these rules must be adhered to strictly and those practitioners who ignore them will do so at their own

peril. The provisions in the rules allowing for extensions of time are there to ensure that if circumstances prevail which make it impossible or even extremely difficult for parties to take procedural steps within prescribed times relief will be given where the court is satisfied that circumstances demand it. It must be emphasised that before this court is able to exercise this discretion to grant such relief there must be material before it on which it can act."

It was for these reasons that we refused the application, with costs to be taxed in default of agreement.



M.M.S.W. NGULUBE
CHIEF JUSTICE



E.L. SAKALA
SUPREME COURT JUDGE



W.M. MUZYAMBA
SUPREME COURT JUDGE