

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA
(CIVIL JURISDICTION)

APPEAL NO. 2/2005

B E T W E E N:

KONKOLA COPPER MINES PLC

APPELLANT

AND

PHILLIP MUSUKWA

RESPONDENT

CORAM: LEWANIKA, DCJ, MAMBILIMA, SILOMBA JJS
On 8th June, 2005 and 8th March, 2006

For the Appellant: M. NDULO, Legal Counsel, K.C.M.

For the Respondent: W. BANDA of WILSON & CORNHILL

JUDGMENT

LEWANIKA, DCJ delivered the judgment of the Court.

When we heard this appeal we allowed the appeal and ordered that the appeal from the decision of the Subordinate court be heard and determined by a different Judge of the High Court at Kitwe and that we would give our reasons later, and we now do so.

The short history of this matter is that the Appellant had appealed against the decision of the subordinate court for the Chililabombwe District. On 20th February, 2003 the subordinate court made an order of security on

appeal providing the Appellant pays K450,000.00 security for costs on appeal and K50,000.00 for making up and transmission of the record of appeal. The Appellant paid the sum of K500,000.00 on 11th April, 2003. For reasons which are not clear to us, the appeal was set down for hearing before the record of appeal was received by the High Court and in consequence thereof the hearing of the appeal had to be adjourned on a few occasions. When the appeal came up for hearing on 28th October, 2004 the record of appeal had still not been received by the court and the learned Judge in the Court below made the following Order:-

“This notice of appeal was filed in February, 2003. It is incumbent upon the Appellant to ensure that the record is transmitted in good time. Given over a year and half, with which to do this, I believe that the Appellant has not done its best to have the record prepared and transmitted to this court. I therefore order that all the Respondent’s costs from the date of notice of appeal to date should be paid by the Appellant before they proceed to argue the appeal.”

This Order was the subject of the appeal before us. As we have pointed out earlier, the Appellant had complied with the Order of security on appeal made by the subordinate court. Thereafter, it was the duty of the Court to prepare and transmit the record of appeal to the High Court. The Appellant was under no obligation to do so. In any case the Appeal should not have been set down for hearing before the record of appeal was received

by the High Court. It was for this reason that we allowed the appeal and made no order as to costs.

D.M. Lewanika
DEPUTY CHIEF JUSTICE

I.M.C. Mambilima
SUPREME COURT JUDGE

S.S. Silomba
SUPREME COURT JUDGE