

**IN THE SUPREME COURT OF ZAMBIA**

**SCZ /8/37/2013**

**HOLDEN AT LUSAKA**

(Civil Jurisdiction)

**BETWEEN**

**BELLONE BUSIKU  
FANNY MTONGA BUSIKU  
ALUMIN WORLD LIMITED  
WORLD OF GLASS LIMITED  
APPELLANT**

**1<sup>ST</sup> APPELLANT  
2<sup>ND</sup> APPELLANT  
3<sup>RD</sup> APPELLANT  
4<sup>TH</sup>**

**AND**

**GLASSWORLD LIMITED**

**RESPONDENT**

***Before Hon. Mrs. Justice E.N.C. Muyovwe on the 16<sup>th</sup> July  
2013***

**FOR THE APPELLANTS:** Mr. H. A. Chizu and Mr. C. Chanda of Messrs Chanda Chizu & Associates and Mr. G. Phiri of Messrs Muleza Mwimbu & Co.

**FOR THE RESPONDENT:** No appearance

---

**R U L I N G**

---

This is an application by the appellants for an order to file the Record of Appeal out of time and for consolidation pursuant to Rule 7 and 12 of the Supreme Court Rules Cap 25.

In the affidavit in support it is deposed that the respondent commenced an action claiming for reliefs which upon perusal of

the writ was challenged by the appellants as being irregular. And the appellants entered a conditional appearance. At the same time, the respondent filed various interlocutory applications for receivership injunction and to render an account which applications were opposed and had dates fixed for hearing. That on 22<sup>nd</sup> January 2013 the Court below delivered a Ruling on a preliminary issue raised by the respondent and granted leave to appeal to the Supreme Court. Further, that the appellants filed the Notice of Appeal and Memorandum of Appeal in the Supreme Court. However, after this, the respondents filed a default judgment which was merely signed by Counsel, granting many contentious reliefs including the appointment of a Receiver in the name of Felix Mutale Chisambo. That the respondent attempted to execute the default judgment in spite of the fact that the appellants had appealed to the Supreme Court thereby prompting them to apply to set aside the default judgment. But that delivery of the Ruling by the lower Court took long and the appellants had no access to the record in order for them to prepare the record of appeal. That, therefore, the time to file the record of appeal expired. That the appellants could not immediately file an

application for extension of time before expiry of the said time as it was not certain when the Ruling could be delivered.

That on 28<sup>th</sup> May 2013 the High Court delivered a Ruling refusing to set aside the default judgment and again granted leave to appeal to the Supreme Court. That the Ruling was interpreted to mean that the default judgment finally determined the matter and the respondent immediately without waiting for the statutory grace period given to execute any Judgment or Ruling swung into action by immediately taking the Receiver at the 4<sup>th</sup> appellant's premises who took over the premises and started carrying out duties of the receiver and blocked the bank accounts. At the same time, a Writ of Fufa was issued and the bailiffs went to execute at the appellants' premises and that when it transpired that there was a stay of execution at the 3<sup>rd</sup> and 4<sup>th</sup> appellants' premises, the respondent instructed the bailiffs to immediately go to the 1<sup>st</sup> and 2<sup>nd</sup> appellants to execute on them personally and one of the 1<sup>st</sup> appellant's relatives was arrested for allegedly preventing the execution as he challenged the bailiffs that there was a stay of execution. It was further deposed that the appellants have appealed against the High Court ruling

refusing to set aside the default judgment under Cause No. SCZ/8/148/2013. That the appellants are requesting this Court to consolidate the two appeals since they are inter-related and arise from the same main matter and that the consolidation of the two matters will not prejudice the respondent but will enable the issues in dispute to be determined once and for all.

There was no appearance for the respondent and the matter proceeded on the basis that the respondent was served with the Court process as per affidavit of service filed herein.

On behalf of the appellants, Mr. Chizu submitted that they were making two concurrent applications. With regard to the application for leave to file the record of appeal, he submitted that they did not apply for extension of time because the file in the Court below was very active and they could not access it in order to prepare the record of appeal and that another ruling was pending which led to the default judgment against which they are appealing. He submitted that under Rule 12 this Court is allowed and has jurisdiction to entertain such application even after the

time has expired. He prayed that leave be granted to file the record out of time.

In relation to the application to consolidate, he also relied on the affidavit in support and submitted that the main contention is that the two Causes No. SCZ/8/37/201 and SCZ/8/148/2013 arise from more or less the same facts and from the same main matter which is Cause No. 2011/HPC/0729. Counsel submitted that it will be appropriate and reasonable to have the two causes consolidated to avoid duplicity of causes and that this will not prejudice any of the parties and that the issues in dispute will be determined by one Court.

I have considered the affidavit evidence and the submissions by Counsel. On the application to file the record of appeal out of time, the reason advanced for the default is that there were other applications before the learned Judge in the Court below which made it difficult to access the record and thereby hampering the preparation of the record of appeal on time. I note that the appellants filed their notice of appeal on 31<sup>st</sup> January 2013. Indeed, they had 60 days within which to file the record of appeal

which approximately was up to beginning of April. Having regard to the period involved, I would not say that there was inordinate delay. For this reason I will exercise my discretion in favour of the appellants. I grant the application and order that they file the record of appeal together with Heads of argument within 14 days from today.

With regard to the application for consolidation, I have considered the submission by Counsel. I have perused the record in relation to Cause No. SCZ/8/148/2013 and am satisfied that the appeal filed on 30<sup>th</sup> May 2013 arises out of the decision of Hon. Mrs. Justice Chishimba delivered on 28<sup>th</sup> May 2013 relating to the same matter, involving the same parties under Cause No. 2012/HPC/0729. I agree with the appellants that it is only proper that the two appeals are consolidated and heard as one appeal. The application for consolidation is hereby granted.

Costs for both applications are in the cause.

**Delivered in Chambers on this 16<sup>th</sup> day of July, 2013.**

**E.N.C. MUYOVWE  
SUPREME COURT JUDGE**