

SCZ Judgment No. 4 of 2013

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IN THE SUPREME COURT OF ZAMBIA

SCZ/8/257/2011

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

FINANCE BANK LIMITED

APPELLANT

AND

FRANK JAMES KALAMBATA

RESPONDENT

Coram: Mwanamwambwa, Phiri and Muyovwe, JJS

On 21st November, 2012 and 22nd May, 2013.

For the Appellant: Mr. M. Chiteba, Messrs Mulenga Mundashi & Company

For the Respondent: No appearance

R U L I N G

MUYOVWE, JS, delivered the Ruling of the Court.

By Notice of Motion pursuant to Rule 48 (4) of the Supreme Court Rules Cap 25 of the Laws of Zambia, the appellant applied for an order

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that the Ruling of a single Judge of this Court dated 16th March, 2012 be set aside on the grounds set out in the affidavit in support and that costs of this motion be in the cause.

The undisputed facts and background to this motion are that the Industrial Relations Court pronounced judgment in open Court on 15th September 2011 in favor of the Respondent. That on 17th November 2011 the Industrial Relations Court sealed and released a physical copy of the judgment to the parties. That the Applicant being dissatisfied with this Judgment filed a Notice to Appeal in the Supreme Court on 25th November 2011. That on 20th December 2011, a Summons was filed into Court by the Respondent for an application to dismiss the appeal for irregularity on the basis that the Notice of Appeal was filed well after 30 days of its delivery. That a Ruling was delivered by a single Judge of this Honorable Court on 16th

March 2012 allowing the application to dismiss the appeal for irregularity.

The appellant being dissatisfied with the Ruling of the single Judge appealed to the full Bench.

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Suffice to note that we proceeded to hear the matter in absence of the respondent as there was proof of service.

On behalf of the appellant, Mr. Chiteba relied on the filed Heads of Arguments on record. In his written submissions he cited, inter alia, Section 8 of the Supreme Court Amendment Act No. 8 of 2011 which reads as follows:

8. (1) Subject to subsection (2), the jurisdiction vested in the Court shall, as regards practice and procedure, be exercised in the manner provided by this Act and rules of Court.

(2) Notwithstanding subsection (1), where this Act or rules of Court do not make provision for any particular point of practice and procedure, the practice and procedure of the Court shall be-

- (a) in relation to criminal matters, as nearly as may be in accordance with the law and practice observed in the Court of Criminal Appeal in England; and**
- (b) subject to subsection (3), in relation to civil matters, as nearly as may be in accordance with the Supreme Court Practice, 1999 (White Book) of England and the law and practice in the Court of Appeal in England in force up to 31st December, 1999.**

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(3) The Civil Court Practice, 1999 (Green Book) of England and any civil court practice rules issued in England after 31st December, 1999, shall not apply to Zambia.

Further, that Rule 49 (2) provides that:

The notice of appeal shall be intituled in the proceedings from which it is intended to appeal and shall be filed therewith in duplicate with the Registrar of the High Court, and shall be so filed within thirty days after the judgment complained of. The Registrar of the High Court shall forward one copy of the notice to the Master. One copy of the notice of appeal for each party directly affected by the appeal shall at the same time be submitted by the Registrar of the High

Court to the Master for sealing and return to the appellant or his practitioner for service in accordance with sub-rule (5)

He submitted, further, that Order 42/3/9 of the Rules of the Supreme Court gives direction on when the time for an appeal is supposed to run as it provides as follows:

“The time for appeal to the Court of appeal runs from the time when the judgment or order is signed, entered or otherwise perfected: See Order 59 Rule 4(1) and notes”

The gist of Counsel’s arguments is that although in terms of Rule 49 (2) an appeal should be lodged within thirty days, the rules do not

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provide guidance as regards the date from which the time period should run. That the single Judge erred in adopting a literal interpretation of Rule 49 as this interpretation leads to an unreasonable and unjust situation. Counsel contended that, therefore, the single Judge should have had recourse to Order 42/3/9 read together with Order 59/4/1. That in this case, the Judgment of the lower Court was signed and sealed on 17th November, 2011 and the appellant filed its appeal on 25th November, 2011. He submitted that, therefore, the Notice of Appeal was filed in compliance with Rule

49(2) and that, therefore, the single Judge of this Court erred in that Ruling when she dismissed the appeal.

Counsel prayed that the Ruling by the single Judge dismissing the appeal be set aside so that the matter may proceed on appeal and be determined on merit.

We have considered the submissions by learned Counsel for the appellant and authorities cited.

The question before us is, when did the time for lodging the appeal start running? Was it on 15th September 2011 when the judgment was

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pronounced in Open Court or was it from 17th November 2011 when the judgment was sealed and signed?

We have given consideration to Rule 49(2) which gives guidance as to the time within which to lodge an appeal. Notably, the application before the single Judge was for dismissal of the appeal for irregularity and was brought pursuant to Rule 55 which provides that:

If an appeal is not lodged as aforesaid the respondent may make application to the Court for an order dismissing the appeal for want of prosecution and, or alternatively, for such other order in regard to the appeal as he may require.

It is important to take note of Rule 54 which states:

54. Subject to any extension of time and to any order made under rule 12, the appellant shall within sixty days after filing notice of appeal lodge the appeal by filing in the Registry five copies of the record of appeal, paying the prescribed fee and lodging in Court the sum of two thousand fee units as security for the costs of the appeal.

Having regard to the law cited and the circumstances of this case, we are of the view that the single Judge should not have dismissed the

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appeal under Rule 55 as the application did not relate to Rule 54. In this case, according to the respondent, the appellant was allegedly out

of time as they did not apply for extension of time. However, it is clear that although the judgment was pronounced in open Court on

15th September, 2011 the perfected copy was only signed, sealed and availed on 17th November 2011. The appellant then filed their appeal on 25th November 2011. Indeed, taking into account Order 42/3/9 which is explicit in its provisions, we agree that the time for appeal should run from the time when the judgment or Order is signed or perfected as the case may be.

In passing, we want to state that it is desirable, therefore, that after delivering a judgment, Ruling or Orders, Courts should avail the signed and sealed copy expeditiously to the parties in order to allow parties to decide on their next course of action and, indeed, to avoid applications such as the one before us which arose out of the fact that there was a delay in releasing the perfected copy of the judgment.

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We, therefore, find merit in the application and we hereby set aside the Order dismissing the appeal.

Costs in the cause.

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M.S. MWANAMWAMBWA
SUPREME COURT JUDGE

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G.S. PHIRI
SUPREME COURT JUDGE

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E.N.C. MUYOVWE
SUPREME COURT JUDGE