

IN THE SUPREME COURT FOR ZAMBIA

SCZ8/210/2015

HOLDEN AT LUSAKA

BETWEEN:

KASUMBA WILFRED NGULUBE & 86 OTHERS

APPELLANTS

AND

NITROGEN CHEMICALS OF ZAMBIA

RESPONDENT

Coram : Hamaundu, Mutuna and Chinyama, JJS

On 20th October 2016

For the Appellant : Mr. B. Gondwe from Buta Gondwe & Associates

For the Respondent : Mr. B. Katuta of Loboko chambers agents of SBN Legal Practitioners.

J U D G M E N T

Mutuna, JS delivered the Judgment of the court.

This is a motion for leave to set aside the order for dismissal of appeal for want of prosecution of application for leave to file record of appeal and heads of argument out of time.

The background leading up to the application is that on 1st December 2015, the Appellant filed an application for leave of this court to file record of appeal and heads of argument out of time.

The application was set down for hearing on 20th January 2016 before a single judge of this court and was dismissed for non attendance of parties.

The Appellant's counsel has revealed the reason for his non attendance in the affidavit in support, which shows that the registry staff had advised his assistant to check for the hearing date for the application on 20th January 2016. That upon arrival at court, the assistant was informed that the matter came up that morning and it was dismissed for want of prosecution.

The Respondent argued that the motion should be dismissed because the Appellant was in *contumelious* default.

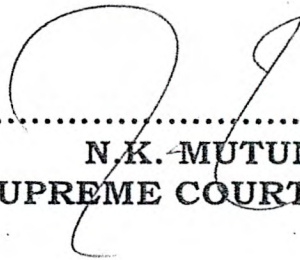
We have considered the affidavit evidence and arguments by counsel. In terms of rule 16(4) of this court's rules, if at the hearing of an application counsel for the Applicant does not turn up and no reasons have been given for his absence, the court may strike out the application. The rule does not allow the court to dismiss the application. To the extent, therefore, that the single Judge dismissed the application and not struck it off, it was a misdirection on his part. We therefore order that:

- 1) The order dismissing the application is hereby discharged and the application that was before the single Judge is accordingly restored.
- 2) The record be remitted back to the single Judge for hearing of the said application for leave to file record of appeal and heads of argument out of time.

As to costs, we order that the circumstances of this case dictate that the Appellant bears the costs.



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E. M. HAMAUNDU
SUPREME COURT JUDGE



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N. K. MUTUNA
SUPREME COURT JUDGE



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J. CHINYAMA
SUPREME COURT JUDGE