

IN THE SUPREME COURT OF ZAMBIA

SCZ/8/28/2021

HOLDEN AT LUSAKA

(Civil jurisdiction)

BETWEEN:



LASFORD KAYULA NKONDE AND 18 OTHERS **APPLICANTS**

AND

THE ATTORNEY GENERAL

RESPONDENT

Coram : Wood, Mutuna and Chinyama, JJS

On 19th January 2022 and 8th February 2022

For the Applicants : Mr. M. Chitambala of Lukona Chambers

**For the Respondents : Mrs. D. Mwewa – Sallah, Attorney General's
Chambers**

R U L I N G

Mutuna, JS. delivered the ruling of the court.

Cases referred to:

- 1) Lasford Kayula Nkonde and 18 others v The Attorney General
SCZ/8/7/2015**
- 2) Ireen Dhillwayo and 880 others v Bank of Zambia and others
SCZ/8/222/2014**

- 3) **Richard Nsofu Mandona v Total Aviation and Export Limited, Zambia National Oil Company Limited, (in Liquidation) and Indeni Petroleum Refining Company Limited Appeal No.82 of 2009**
- 4) **Nkhuwa v Lusaka Tyre Service Limited (1977) ZR 43**
- 5) **Sayers v Clarke Walker (2002) 1 WLR 3095**

Statutes referred to:

- 1) **The Supreme Court Rules, Cap. 25**

Introduction

- 1) This motion by the Applicants seeks an extension of time within which to file a motion to reopen appeal number 43 of 2016.
- 2) The motion follows the judgment of this court dated 23rd December 2020 which allowed the appeal by the Respondent against a decision of the Learned High Court Judge, in terms of which, the Applicants were awarded certain amounts as compensation.

Background

- 3) The backdrop to this motion as it relates to the matters before us is that on 23rd December 2020 this court delivered a judgment in appeal number 43 of 2016. The

judgment allowed the appeal which was launched by the Respondent.

- 4) Disenchanted with the judgment, the Applicants sought leave of a single judge of this court for extension of time within which to file a motion to reopen the appeal. The single Judge, by a ruling dated 15th March 2021, dismissed the application on the ground of want of jurisdiction.
- 5) The Applicants escalated the application to the full bench of this court by way of renewing the application made before the single judge. By a ruling dated 13th September 2021, this court confirmed the decision of the single judge and dismissed the Applicants' application.
- 6) The Applicants have now launched this motion, seeking as we have said, extension of time within which to file motion to reopen the appeal.

The evidence and arguments deployed by the parties

- 7) In moving the motion, the Applicants relied upon the affidavit in support by Moffat Fumbelo, one of the

Applicants. The evidence sets out the reasons for the delay in making the application which he said were due to the fact that at the time of delivery of the judgment in the appeal their advocate was on Christmas break and as such only had sight of the judgment on 29th December 2020.

- 8) The deponent also set out the steps which his advocate took after having sight of the judgment which we have referred to in the earlier part of this ruling. He ended by stating the grounds upon which the Applicants sought to rely upon in challenging the judgment if the application were granted.
- 9) The arguments in support of the application by Mr. Chitambala set out the provisions of rules 12(1) and 48(5) of the Supreme Court Rules on the power of this court to extend time and the time limit for making applications following a judgment.
- 10) Mr. Chitambala ended by citing a number of decisions of this court in which we have stated the principles for enlarging time and stated the relevant considerations in such applications. These cases were ***Lasford Kayula***

Nkonde and 18 others v The Attorney General¹, Ireen Dhillwayo and 880 others v Bank of Zambia and others² and Richard Nsofu Mandona v Total Aviation and Export Limited, Zambia National Oil Company Limited (in Liquidation) and Indeni Petroleum Refining Company³. We were urged to allow the application.

- 11) The evidence deployed by the Respondent was an affidavit deposed by Diana Mwewa – Sallah, counsel for the Respondent. The gist of her evidence was that the Applicants have not demonstrated sufficient reasons for this court to grant the extension.
- 12) In her arguments Mrs. Mwewa – Sallah emphasized the need for parties to obey rules of court in line with the decision of this court in the case of ***Nkhuwa v Lusaka Tyre Service Limited⁴***. She contended further that in order for this court to exercise its powers under rule 12(1) of the Supreme Court Rules, there must be laid before it sufficient material upon which it can act.

- 13) According to counsel, no such material has been laid before this court because the reasons advanced were not acceptable. Counsel referred us to the English case of ***Sayers v Clarke Walker***⁵ and argued that it sets out the considerations to be made by this court in dealing with an application such as the one with which we are engaged, as being whether the application was made promptly and whether there is a good explanation for the failure. She once again referred to the ***Nkhuwa***⁴ case and stated that we are not permitted to exercise our discretion to extend time without good cause and that we must consider the time that has lapsed in making such an application.
- 14) At the hearing of the matter counsel by and large restated their arguments and evidence in the written submissions.

Consideration and decision by this court

- 15) In our consideration of this application, we have had sight of the affidavit evidence and arguments by counsel. Our determination of this matter hinges on whether or not we accept the excuse given by the Applicants for the delay in

filing the motion after the judgment. This is based on the fact that rule 12(1) of the Supreme Court Rules specifically empowers us to exercise our discretion to extend time only where there is sufficient reason for us to do so. This is in line with a plethora of decisions of this court and in particular the **Nkhuwa** case as Mrs. Mwewa – Sallah has correctly argued. In that case this court stated that we will not exercise our discretion to extend time unless there is good cause to do so.

- 16) To recap, Mr. Chitambala has argued that his clients live in various places outside Lusaka and are of advanced age, hence, found it difficult to co-ordinate and instruct counsel. He has also argued that delivery of the judgment was over the Festive Season when his chambers were closed.
- 17) A review of the background to this application reveals that notwithstanding the challenges set out above, counsel for the Applicants was still able to file the erroneous motion before the single judge on time. He proceeded to escalate the erroneous motion to the full bench of this court which

confirmed the decision of the single judge. Our reference to the erroneous motion is deliberate and to demonstrate the real reason behind the delay as being the omission by counsel. Such omission is not sufficient reason or cause for us to extend time, because the rules of this court are clear as to the recourse which was open to the Applicants after the judgment. The fact that their counsel misinterpreted those rules and embarked on the wrong course of action is not a sufficient or justifiable reason for us to exercise our discretion to extend time.

- 18) We are, therefore, of the firm view that the Applicants have not satisfied the threshold set by rule 12(1), and consequently the application must fail.
- 19) We accordingly dismiss the application, with costs to the Respondent. These will be taxed in default of agreement.

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A. M. WOOD
SUPREME COURT JUDGE

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N. K. MUTUNA
SUPREME COURT JUDGE

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J. CHINYAMA
SUPREME COURT JUDGE