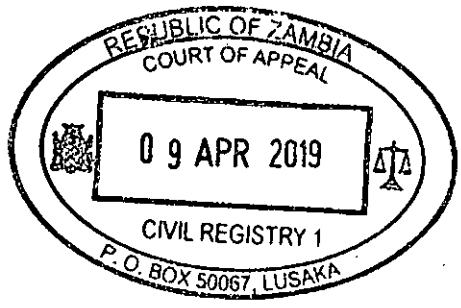
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IN THE COURT OF APPEAL FOR ZAMBIA **NOM/35/2018**

HOLDEN AT KABWE

(Civil Jurisdiction)



BETWEEN:

ZAMBIA SUGAR PLC **APPELLANT**

AND

LUMUNO MUKWALI **RESPONDENT**

CORAM: CHISANGA JP, MAKUNGU, KONDOLO SC, JJA

On 16th October, 2018 and 9th April, 2019

For the Appellant: Mr. Tembo of Messrs Tembo, Ngulube & Associates

For the Respondent: In Person

R U L I N G

KONDOLO SC, JA delivered the Judgment of the Court

CASES REFERRED:

1. **Patson Sakala v Heinrich's Syndicate Limited & Heinrich's Beverages Appeal No. 08/2016**
2. **Twampane Mining Co-operative Society Limited v E & M Storti Mining Limited (2011) 3 ZR 67**

3. **Stanbic Bank Zambia Limited v Savenda Management Services Limited 2016/CAZ/08/040**

LEGISLATION REFERRED TO:

1. **The Court of Appeal Rules, 2016**
2. **The Court of Appeal Act No. 7 of 2016**

The background to this application is that after judgement was rendered in the Court below, the Appellant approached that court with an application to file an appeal out of time. The application was refused and the Appellant escalated the application to a single judge of this Court who dismissed it.

The Appellant proceeded to renew the application before this Court by filing a Notice pursuant to **Order 10 Rule 2 (8) of the Court of Appeal Rules (CAR)** and **Section 9(b) of the Court of Appeals Act (CAZ).**

The Affidavit in support was deposed to by Mazuba Moonga, Counsel for the Appellant. Judgment subject of the pending appeal was delivered on 24th April, 2018 in favour of the Respondent and a copy of the same was served on the Appellant via email on 9th May, 2018. The Appellant had not uplifted a copy of the Judgment at the time but nonetheless served a copy on the Client on 12th May, 2018 for further instructions. Unfortunately, the instructions were

only given following a legal opinion on 24th May 2018, which was the last day on which an Appeal could have been lodged.

Consequently, on 1st June, 2018 an application to appeal out of time was made but was denied on 11th June, 2018. The same application was renewed before a Single Judge of the Court of appeal who refused it on grounds that the reasons advanced were insufficient to warrant the Court to grant the application as prayed. The same reasons have now been advanced before us to extend time within which to appeal.

In opposition, the Respondent, in his Affidavit stated that he served the Appellant with a copy of the Judgment on 9th May, 2018. In the processes of seeking legal opinion from its Advocates, the Appellant credited his account with K216,688.00 consenting to the lower Court's Judgment. However, when he made an inquiry on the shortfall, the money was recalled by the Appellant. Following these events, the Appellant applied, to the lower Court, for leave to appeal out of time in both the lower Court and the Court of Appeal and both applications were denied. The Respondent stated that this application was an abuse of the court process because the Appellant was aware of the Court rules and as such the application must be dismissed.

The Appellant filed Heads of Argument in support of the Motion and cited our Ruling in **Patson Sakala v Heinrich's Syndicate Limited & Heinrich's**

Beverages Appeal[1] where we stated that the threshold for granting extension of time under **Order 13/3(3) CAR** is that the delay should not be inordinate and the reason being advanced for the delay must be sufficient. In that case the delay was slightly over 2 months after delivery of Judgment and the reason proffered was that the Respondent was reviewing the Judgments to see if there were any prospects of success. Similarly, the Appellant was required to render a legal opinion before obtaining instructions on how to proceed. Further, the Single Judge, in his Ruling, also acknowledged the fact that the delay was not inordinate. Our attention was drawn to the fact that the Appellant was not a natural person but an entity whose decisions cannot be made by a single person but can only be made after consultations which may take long.

We have considered the submissions by the Parties. **Order 10/3/3 CAR**, gives this Court the power to extend time within which an appeal can be brought. The said Section provides as follows:

> ***(3) The Court may for sufficient reason extend time for making an application, including an application for leave to appeal, or for bringing an appeal, or for taking any step in or in connection with any appeal, despite the time limited having expired, and whether the time limited for that purpose was so limited by the order of the Court, by these Rules, or by any written law.***

In **Twampane Mining Co-operative Society Limited v E & M Storti Mining Limited**[1] the Supreme Court held as follows:

> ***".... in cases where the delay was very short and there was an acceptable excuse for the delay, as a general rule the appellant should not be deprived of his right of appeal and so no question of the merits of the appeal will arise. We wish to emphasize that the discretion which fell to be exercised is unfettered, and should be exercised flexibly with regard to the facts of the particular case."***

We held a similar view in the case of **Stanbic Bank Zambia Limited v Savenda Management Services Limited**[2] where we stated that in determining an application for extension of time within which to appeal, the Court will have regard to the circumstances, reasons and length of the delay.

The case before us does indeed offer similar reasons proffered in **Patson Sakala** where we found that the delay was not inordinate and the reasons given, that Counsel was perusing the Judgment, were accepted as sufficient to allow the application. We find that, under the circumstances of this particular case, the delay of 10 days was not inordinate. We have further considered the reasons given for the delay that the Appellant is a corporate entity which

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[1] *Twampane Mining Co-operative Society Limited v E & M Storti Mining Limited SCZ/20/2011*

requires time to make a decision with regard to instructions and find this reason to be good enough.

We therefore grant the Application for extension of time within which to file the Notice of Appeal together with the Memorandum of Appeal, the same should be filed within the next 14 days.

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F.M. CHISANGA
JUDGE-PRESIDENT

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C.K. MAKUNGU
COURT OF APPEAL JUDGE

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M.M. KONDOLO SC
COURT OF APPEAL JUDGE