

IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT NDOLA  
(CIVIL JURISDICTION)

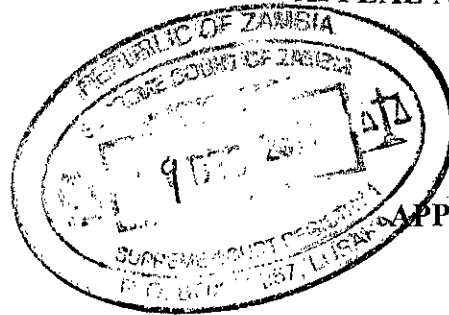
APPEAL NO. 006/2017

BETWEEN:

MANDONA FREEBOY

AND

JOSHUA NKANDU



APPELLANT

RESPONDENT

CORAM: MAMBILIMA CJ, MALILA AND KAJIMANGA, JJS;  
On 3<sup>rd</sup> December, 2019 and 9<sup>th</sup> December 2019

For the Appellant : Mrs. S.C. Lukwesa - Senior Legal Aid  
Counsel, of Legal Aid Board  
For the Respondent : Mr. M. Z. Mwandenga of Messrs. M.Z. Mwandenga  
and Company

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**RULING**

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MAMBILIMA CJ delivered the Ruling of the Court.

**CASES REFERRED TO:**

1. LASTON PHIRI V TROPICAL DISEASES RESEARCH CENTRE, APPEAL NO. 005/2014
2. SONNY MULENGA AND VISMER MULENGA V THE VALUATION SURVEYORS REGISTRATION BOARD (2009) ZR 54
3. LEVI CHIFWEMBE AND 83 OTHERS V MOOLMANS MINING (Z) LIMITED, APPEAL NO. 172/2013
4. INUTU ETAMBUYU SUBA V INDO-ZAMBIA BANK LIMITED, SCZ JUDGEMENT NO. 52 OF 2017
5. RICHARD NSOFU MANDONA V TOTAL AVIATION AND EXPORT LIMITED AND 3 OTHERS, APPEAL NO. 82/2009
6. JULY DANOBO T/A JULDAN MOTORS V CHIMSORO FARMS LIMITED (2009) ZR 148
7. SHOPRITE HOLDINGS LIMITED, SHOPRITE CHECKERS (PTY) LIMITED V LEWIS CHISANGA MOSHO, LEWIS NATHAN ADVOCATES (SUED AS A FIRM), SCZ JUDGMENT NO. 40/2014
8. NFC AFRICA MINING PLC V TECHRO ZAMBIA LIMITED (2009) ZR 236
9. ACCESS BANK (Z) LTD. V GROUP FIVE/ZCON BUSINESS PARK JOINT VENTURE, APPEAL NO. SCZ/8/52/2014

10. PATMAT LEGAL PRACTITIONERS (SUED AS A FIRM) V CHIPO ZYAMWAIKA MUDENDA NDELE AND 2 OTHERS, SCZ JUDGMENT NO. 62 of 2017
11. SOCOTEC INTERNATIONAL INSPECTION (ZAMBIA) LIMITED V FINANCE BANK, APPEAL NO 149/2011
12. PETER DAVID LLOYD V J. R. TEXTILES LIMITED, APPEAL NO. 137/2011
13. ZAMBIA REVENUE AUTHORITY V CHARLES WALUMWEYA MUHAU MASIYE, APPEAL NO. 56/2011
14. THE PEOPLE V THE PATENTS AND COMPANIES REGISTRATION AGENCY AND EX-PARTE FINBURY INVESTMENT LIMITED AND ZAMBEZI PORTLAND CEMENT LIMITED, SELECTED JUDGMENT NO. 28 2018
15. LILLIAN CHUMA MWANAPA V PATEL CHUBBA JOGDISH
16. BANK OF ZAMBIA (As Liquidator of Credit Africa Bank Limited in Liquidation) V AL SHAMS BUILDING MATERIALS COMPANY LIMITED, APPEAL NO. 214 OF 2013

**LEGISLATION REFERRED TO:**

- i. THE SUPREME COURT RULES, CHAPTER 25 OF THE LAWS OF ZAMBIA
- ii. THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016

**1. INTRODUCTION**

1.1 This appeal was set for hearing today, the 3<sup>rd</sup> of December 2019.

However, by a notice filed on 31<sup>st</sup> October, 2019, Counsel for the Respondent has raised preliminary objections to the appeal.

**2. BACKGROUND**

2.1 The main appeal is against the judgment of the High Court, delivered on 15<sup>th</sup> October, 2014, declaring the Respondent as having been validly elected as Chief Sokontwe of Milenge District in Luapula Province of Zambia. Dissatisfied with that judgment,

the Appellant appealed to this Court, advancing four grounds of appeal, namely that: –

1. the learned trial Judge erred in law and fact when she held that the Defendant, who is eligible to be Chief Sonkontwe in the face of direct documentary evidence from the Defendant's own bundle of documents to the effect that grandchildren are not eligible to the throne of Chief Sonkontwe;
2. the learned trial Judge erred in law when he held that the manuscript written by Father Bernard is authoritative on matters of Sonkontwe Chieftdom when in fact the same lacks legal authority to be referred to in proceedings;
3. the learned trial Judge erred both in law and fact when she held that Mary Selenge was validly selected to be Chief Sonkontwe in accordance African customary law when the selection was contrary to norm and customs of the Aushi customs; and
4. further grounds to follow upon perusal of the court proceedings.

2.2 Counsel for the Appellant, filed written heads of argument in support of the appeal, which only canvassed the first, second and third grounds of appeal.

2.3 As stated in paragraph 1.1 above, Counsel for the Respondent, Mr. Mwandenga, has now raised preliminary objections to the appeal.

### **3.0 THE RESPONDENT'S PRELIMINARY OBJECTIONS**

3.1 There are five grounds of objections on which the Respondent prays that we should dismiss this appeal with costs.. These are:-

1. that the first ground of the appeal does not on its face disclose the error of law or fact complained of;
2. that the fourth ground of the appeal has been abandoned;
3. further and/or alternatively that the fourth ground of the appeal is not a valid ground of appeal

4. that the record of appeal does not contain some of the documents that were produced or used in the court below; and/or
5. that the record of appeal is not drawn up in the prescribed manner

#### 4. THE RESPONDENT'S SUBMISSIONS IN SUPPORT OF THE PRELIMINARY OBJECTIONS

- 4.1 In arguing the first ground of objection, Mr. Mwandenga submitted that a casual or meticulous review of the first ground of appeal will reveal that it is vague in that it is not clear as to what the Appellant's objection or complaint to the Judgment of the Court below is. That as formulated, the ground of appeal does not sit well with **RULE 58(2) OF THE SUPREME COURT RULES**, which provides that:

“The memorandum of appeal shall be substantially in Form CIV/3 of the Third Schedule and shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the judgment appealed against, and shall specify the points of law or fact which are alleged to have been wrongly decided, such grounds to be numbered consecutively.”

- 4.2 Taking the argument further, Counsel pointed out that the first ground of the appeal does not clearly show the bone of contention. To buttress his point he referred us to our decision in the case of **LASTON PHIRI V TROPICAL DISEASES RESEARCH CENTRE<sup>(1)</sup>**, where we stated that *“grounds of appeal should be concisely drafted and straight to the point, so that the error*

*complained of, be it of fact or law, is apparent on its face."*

Counsel urged us to dismiss the first ground of appeal for uncertainty and vagueness.

- 4.3 With regard to the second ground of objection, Mr. Mwandenga, pointed out that a perusal of the Appellant's heads of argument revealed that no arguments had been canvassed in support of this ground. He argued that by its conduct, the Appellant had abandoned the second ground of appeal. He anchored this argument on our decisions in the cases of **SONNY MULENGA AND VISMER MULENGA V THE VALUATION SURVEYORS REGISTRATION BOARD<sup>(2)</sup>**, and **LEVI CHIFWEMBE & 83 OTHERS V MOOLMANS MINING (Z) LIMITED<sup>(3)</sup>** in which we regarded the conduct of a party who did not canvass any arguments in support of a ground of appeal as having abandoned the ground of appeal in question.

- 4.4 Coming to the third ground of objection, Counsel contended that the fourth ground of appeal is not a valid ground and it has no legal legs to stand on. To support this contention, he referred us to the case of **INUTU ETAMBUYU SUBA V INDO-ZAMBIA BANK LIMITED<sup>(4)</sup>**, where we said that:-

**“...the Supreme Court Act, via its Third Schedule, envisages that all grounds on which an appeal would have been founded on must be specified in the memorandum of appeal at the time of its preparation.”**

4.5 Counsel argued that the purported fourth ground of appeal was merely a statement indicating that the Appellant was intent on filing further grounds of appeal upon perusal of the record of proceedings. He submitted that it was unnecessary for an appellant to indicate such an intention in the memorandum of appeal when he could add further grounds of appeal by applying under Rule 68 of the Supreme Court Rules for leave to amend the memorandum of appeal to add further grounds if he so desired. Counsel urged us to also dismiss the fourth ground of appeal.

4.6 Submitting further on the fourth ground of objection, Mr. Mwandenga stated that upon perusal and painstaking inspection of the record of appeal, it is apparent that the Appellant did not include the Defendant's bundle of documents and the submissions of the parties which were produced or used in the Court below. That this was obvious even upon a causal inspection of the index to the record of appeal.

4.7 Counsel pointed out that the record of appeal was prepared by Counsel for the Appellant who certified it to have been prepared in

accordance with the provisions of **RULE 58 OF THE SUPREME COURT RULES**. According to Counsel, the implication of this certification is serious. That as decided in the case of **RICHARD NSOFU MANDONA V TOTAL AVIATION AND EXPORT LIMITED AND THREE OTHERS<sup>(5)</sup>**; “.....The certificate as to the record of appeal serves the important purpose of confirming that the record has been properly prepared and in accordance with the rules.” Counsel submitted that care should be taken before one signs a certificate. That in this case, the certificate was not correct because the record of appeal did not contain all the necessary documents that ought to have been included.

4.8 Counsel further referred us to **RULE 58(4) OF THE SUPREME COURT RULES**, which sets out the documents which ought to be contained in a record of appeal. These include all documents which were put in evidence or produced or used at the trial which “... may be directly relevant to the appeal.”

4.9 According to Counsel, the Defendant’s bundle of documents was crucial for the determination of the first ground of appeal, as the ground specifically mentions the said Defendant’s bundle of

documents. According to this ground, the Defendant's bundle of documents is alleged to contain direct documentary evidence to the effect that grandchildren are not eligible to ascend to the throne of Chief Sokontwe. This evidence would be crucial in assisting in the resolution of the dispute. According to Counsel, failure to include the bundle in the record of appeal is fatal as it will not be possible for this Court to properly determine the first ground of the appeal.

4.10 Mr. Mwandenga also argued that the parties' submissions were also crucial for the determination of the second ground of appeal, because the Respondent's case is that this ground raises an issue which was not raised in the Court below. He echoed his earlier submission that failure to include the said documents in the record of appeal is a serious violation of Rule 58(4) of the Supreme Court Rules and fatal to this appeal, as the Court will not be in a position to properly determine the second ground of appeal.

4.11 On the fifth ground of objection, Mr. Mwandenga submitted that because the record of appeal does not contain the documents that ought to have been included, it was, therefore not drawn up in the prescribed manner. He argued that consequently, the record was incomplete and the consequences of such a breach is that the



appeal may be dismissed as provided in **RULE 68(2) OF THE SUPREME COURT RULES**. Counsel also cited the case of **JULY DANOBO T/A JULDAN MOTORS V CHIMSORO FARMS LIMITED<sup>(6)</sup>**, in which this Court stated that:-

**“...Failure to compile the record of appeal in the prescribed manner is visited by sanctions under Rule 68 (2) of the Rules of the Supreme Court. The sanction is that the appeal may be dismissed.”**

According to Counsel, a properly compiled record of appeal goes a long way in aiding the hearing and the determination of an appeal.

4.12 Mr. Mwandenga further submitted that **RULE 58(4) OF THE SUPREME COURT RULES**, is couched in mandatory terms and failure to adhere to the Rule must be visited with sanctions, which include dismissal of the appeal. He argued that although **RULE 68(2) OF THE SUPREME COURT RULES** on the other hand, is not couched in mandatory terms; the case for dismissal of this appeal was made ‘highly likely by the fact that the non-inclusion’ of relevant documents will make it difficult for the parties to argue their respective cases; and also that this Court will have serious difficulties to properly hear and determine the appeal. According to Counsel, failure to draw up the record of appeal in

the prescribed manner in this case goes to the root of the appeal.

The appeal, therefore, cannot survive and ought to be dismissed and the Appellant should be made to suffer the pain of paying the costs of the appeal.

## **5. APPELLANTS SUBMISSIONS IN RESPONSE TO THE PRELIMINARY OBJECTIONS**

5.1 At the hearing of this appeal on 3<sup>rd</sup> December, 2019, the learned Counsel for the Appellant, Mrs. Lukwesa sought leave of the court to file her submissions in response to the grounds of preliminary objections. She augmented them with oral arguments.

5.2 With regard to the first ground of objection, Counsel submitted that there was a typographical error in adding the word 'who' in the first time, which error can be rectified and the matter allowed to proceed to be heard on merit. In her view, this is just a simple grammatical error and the ground as it is makes logical sense. She argued that the error is not fatal and there is still time for leave to be obtained to cure the defect. According to her, the Appellant's heads of argument are clear that the court below held the defendant to be eligible as Chief Sokontwe when the evidence clearly shows that only nephews and nieces were eligible to the throne. She also referred us to the case of **LASTON PHIRI V TROPICAL DISEASES**

**RESEARCH CENTRE**<sup>1</sup> earlier cited to us by the Respondent and submitted that the heads of argument are clear as to the nature of the complaint and the error created by the inclusion of the word 'who.

5.3 Coming to the second and third grounds of objection, Mrs. Lukwesa conceded to the objections and did not offer any response.

5.4 With regard to the fourth ground of objection, Counsel submitted that the circumstances of this case do not warrant to have the appeal dismissed for leaving out the Defendant's bundle of documents and the submissions by the parties in the court below. According to her:

*"The record of appeal was not badly compiled but left out some documents from the Court below."*

5.5 For this submission, Counsel referred us to a passage in the case of **ACCESS BANK (ZAMBIA) LIMITED V GROUP FIVE/ZCON BUSINESS BANK JOINT VENTURE**<sup>9</sup> in which we said:-

**"..Although at first blush our decisions on when or when not to dismiss an appeal for failure to comply with rules of court appear to be contradictory, they are in truth not. In our estimation, the wording of Rule 68(2) is not a panacea for allowing all procedural shortfalls. It is plain that whether or not an appeal is to be dismissed under that rule is to be taken on a case by case basis. As counsel for the appellant has rightly submitted, this invariably implicates the exercise of judicial discretion.."**

5.6 Counsel for the Respondent also referred to other decisions including the case of **BANK OF ZAMBIA (as liquidator of**

**Credit Africa Bank Limited in Liquidation) V AL SHAMS BUILDING MATERIALS COMPANY LIMITED<sup>16</sup>** in which we stated that a Respondent is at liberty to file a supplementary record of appeal if he feels that certain documents have been omitted, in accordance with Rule 59(1) of the Supreme Court Rules.

5.7 Counsel submitted further that after discovering that the Defendant's bundle of documents and the submissions of the parties had been left out, the Respondent should have filed a supplementary record of appeal. Counsel thus urged us to dismiss the first and fourth grounds of objection. She did not respond to the fifth ground of objection.

## **6. RESPONDENTS REPOSE TO THE APPELLANT'S SUBMISSIONS**

6.1 In response to the arguments by the Appellant on the preliminary objections, Mr. Mwandenga submitted that the Appellant has essentially conceded that the first ground of appeal is not properly framed. That the Appellant has isolated the word 'who' and is now trying to use his heads of argument to amend the first ground of appeal, which is not permissible.

6.2 On the contention that the Respondent could have filed a supplementary record of appeal to produce the documents which were missing from the record of appeal, Mr. Mwandenga submitted that the rules which provide for filing of supplementary records of appeal do not make it mandatory for the Respondent to do so. The Respondent still retains his right to apply for dismissal of the appeal.

6.3 To buttress his position, Counsel referred us to the case of **LILLIAN CHUMA MWANAPA V PATEL CHUBBA JOGDISH<sup>15</sup>** in which this Court refused to pronounce itself on an appeal which was anchored on a record of appeal which was defective.

## **7. DECISION OF THIS COURT**

7.1 We have considered the issues raised in the Respondent's preliminary objections and the submissions of Counsel. The first ground of objection is that the first ground of appeal does not disclose the error of law or fact complained of. It has been argued that this ground of appeal is vague and offends **RULE 58(2) OF THE SUPREME COURT RULES**, which requires that grounds of appeal should be concisely crafted and straight to the point.

7.2 The learned Counsel for the Appellant concedes that there was an error which was created by the addition of the word 'who'. According to Mrs. Lukwesa, this was a typographical error which is not fatal and can easily be cured by a proper application.

We have carefully examined the first ground of appeal. In the way that it was formulated, it portrays the Defendant as the person 'who; is eligible to be Chief Sokontwe. The Appellant has spiritedly argued that the use of the word 'who' is an error; that the correct position is as portrayed in the Appellant's heads of argument.

**RULE 58(2) OF THE SUPREME COURT RULES** provides that:

**"58. (2) The memorandum of appeal shall be substantially in Form CIV/3 of the Third Schedule and shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the judgment appealed against, and shall specify the points of law or fact which are alleged to have been wrongly decided, such grounds to be numbered consecutively."**

7.3 It is obvious that the first ground of appeal is ambiguous and vague. It does not tell the story that the Appellant wants to say. Even the Appellant concedes this fact and hence the suggestion that to understand the ground's true import, we have to resort to the Appellant's heads of argument in the main appeal. According

to Rule 58, it is patently obvious that grounds of appeal ought to be discernable, clear, and straight to the point. The Court is not expected to embark on a strenuous path of interpreting grounds of appeal, or indeed second-guessing, just to decipher what the Appellant's objection is to the judgment appealed against. In the circumstances, the first ground of appeal is incompetent and cannot be sustained in its current form. It follows therefore, that the Respondent's first ground of objection is allowed.

7.4 The Appellant has conceded to the second and third grounds of objection and offered no response.

7.5 Coming to the fourth ground of objection, the main contention is that the Appellant did not include in his record of appeal, some relevant documents which were produced and used in the Court below. **RULE 58 OF THE SUPREME COURT RULES** prescribes what the record of appeal should contain. The provisions which are relevant to this appeal, as referred to us by Mr. Mwandenga, are in **RULE 58(4)(h) AND (i) OF THE SUPREME COURT RULES**, which provide that:

**"The record of appeal shall contain the following documents in the order in which they are set out:**

...

(h) copies of all affidavits read and all documents put in evidence in the High Court, so far as they are material for purposes of the appeal, and, if such documents are not in the English language, copies of certified translation thereof affidavits together with copies of documents exhibited thereto shall be arranged in the order in which they were originally filed; other documentary evidence shall be arranged in strict order of date, without regard to the order in which the documents were submitted in evidence;  
 (i) such other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant to the appeal....”  
 (emphasis ours)

7.6 From these provisions, it is clear that not all the documents adduced in evidence in the trial court are required to be included in the record of appeal. Only those that are material for purposes of resolving the appeal should be included. What is in issue in this case is the non inclusion of the Defendant’s bundle of documents and the submissions by the parties. Mr. Mwandenga submitted that the Defendant’s bundle of documents is crucial to the determination of the first ground of appeal, and that the failure to include it in the record of appeal is fatal, because it will not be possible for this Court to properly determine the said ground of appeal.

7.7 He was also of the view that the parties’ submissions are crucial to the resolution of the second ground of appeal, because the Respondent’s case is that the said ground of appeal raises an issue which was not raised in the lower Court. He argued that failure to



include the parties' submissions in the record of appeal is fatal to the appeal, as this Court will not be in a position to properly determine the second ground of appeal.

7.8 We have combed through the record of appeal and we can confirm that the Defendant's bundle of documents and the parties' submissions are not on record. In terms of Rule 58(4) of the Supreme Court Rules, we now have to consider whether the said documents are relevant for purposes of resolving the issues in this appeal.

7.9 It is trite that an appeal to this Court is a re-hearing on the documents and evidence on record. In the case in casu, the Judgment of the Court below shows that the trial Judge, in her reasoning, referred to the documents in the Defendant's bundle of documents. It is apparent that she drew pertinent conclusions from the said documents. It would appear also that her final decision that the Respondent was validly selected as Chief Sonkontwe was informed by the contents of the bundle. At page J28 of her judgment, she stated:

**"The meeting of the Abena Ngulube clan that was held on the 29<sup>th</sup> of August, 2013 at Katena Community School, whose minutes are on page 22 of the Defendant's Bundle of Documents shows that it was attended by representatives of all three candidates, these**

being Mwansa Kaseka, Joshua Nkandu and Freeboy Mandona. The Abena Ngulube at this meeting resolved that all the three candidates were eligible for the throne as they had the same descendants. The Abena Ngulube also resolved that the headmen would be the electorate. It was further resolved that the elections would be conducted by government officials.

I therefore accept that the Abena Ngulube, the royal clan of Chief Sokontwe, who have the task of selecting a chief decided that voting would be the mode of selection of Chieftainess Mary Selenge Sokontwe's successor."

The learned trial Judge went on to state at page J29:

"Page 4 of the Defendant's Bundle of Documents shows that at the time of the ascension to the throne by Chieftainess Mary Selenge, she stood for election with Rival Chimese. The document indicates that votes were counted and that Mary Selenge had 157 votes from ordinary villager as well as 73 votes from members of the royal family. In total, Mary Selenge had 230 votes.

The document states that after counting the votes, all people rejoiced and danced in happiness as Mary Selenge became the first Chieftainess in the area. This shows that previously, elections were held in the selection of Chief Sokontwe. The Plaintiff's claim that the holding of elections was wrong and against custom and tradition accordingly fails."

7.10 There is no doubt therefore, that the Defendant's bundle of documents in this case contained crucial documents on which the lower Court relied. In the absence of these documents, it will not be possible for this Court to effectively determine whether the Court below erred or was on firm ground when it arrived at its decision.

7.11 However, we cannot say the same about the parties' submissions. Mr. Mwandenga made an attempt to convince us that the parties'

submissions are crucial to the resolution of the second ground of appeal, because his client's case is that the second ground of appeal raises an issue which was not raised in the Court below. We do not agree with him.

7.12 Submissions by parties do not constitute evidence. They are simply arguments by a party to persuade a court to accept their point of view in a case. Failure to include them in a record of appeal is not fatal as the resolution of the appeal hinges on the actual evidence before a court.

7.13 Against what we have stated above, we have discretion under Rule 58(4) of the Supreme Court Rules to decide whether to dismiss the Appellant's appeal for failure to include the Defendant's bundle of documents in the record of appeal. Whether or not an appeal is to be dismissed will depend on the nature of the documents left out and whether the absence of such documents will impact the final determination of this appeal. It is clear that the Defendant's bundle of documents was very crucial in the lower Court and would also be critical in this Court.

7.14 The fifth and last ground of objection is an extension of the fourth ground of objection. It has been argued that since the record of

appeal does not contain documents which ought to have been included, it was not drawn up in a prescribed manner and is therefore incomplete. Counsel for the Respondent, Mr. Mwandenga, urged us to dismiss the appeal in accordance with **RULE 68(2) OF THE SUPREME COURT RULES**. He also pointed us to the case of **JULY DANOBO T/A JULDAN MOTORS V CHIMSORO FARMS LIMITED<sup>(6)</sup>**, where we held as follows:

**“As afore-stated, failure to compile the record of appeal in the prescribed manner is visited by sanctions under Rule 68 (2) of the RSC. The sanction is that the appeal may be dismissed. In this case, there is no doubt and as admitted by the learned counsel for the appellant that the record of appeal is incomplete as the record of proceedings of the Court below is missing. It follows that the record of appeal has not been prepared in the manner prescribed by the Rules of this Court. We therefore invoke the provisions of Rule 68 (2), and dismiss this appeal.”**

7.15 We agree that the failure to include the Defendant’s bundle of documents in the record of appeal means that the record of appeal is incomplete and, therefore, offends Rule 68(2) of the Supreme Court Rules.

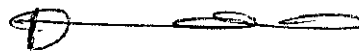
7.16 While we agree with Mr. Mwandenga that an appeal could be dismissed where an Appellant fails to draw up the record of appeal in a prescribed manner, the court retains some discretion as to

whether to dismiss an appeal. The sanction in Rule 68(2) is not couched in mandatory terms.

7.17 In the case in casu, we have established that the Defendant's bundle of documents, which the Appellant omitted from the record of appeal, is crucial to the determination of this appeal. The failure to include the necessary documents offends Rule 58(4) of the Supreme Court Rules. Further, that failure to include the Defendant's bundle of documents in the record renders the record of appeal to be incomplete, thus contravening Rule 68(2) of the Supreme Court Rules. Also there is no application before us by the Appellant to amend the record of appeal to cure the defects. With the record of appeal in its current form, it is not possible for this Court to properly resolve the issues in contention. The Respondent's first, fourth and fifth grounds of objection are upheld. We therefore exercise our discretion under the Rules of the Supreme Court and hereby dismiss this appeal.

## 8. CONCLUSION

8.1 We will not make an order as to costs because the Appellant was legally aided.



I.C. Mambilima  
**CHIEF JUSTICE**



M. Malila

**SUPREME COURT JUDGE**



C. Kajimanga

**SUPREME COURT JUDGE**