IN THE COURT OF APPEAL OF ZAMBIA 2016/CAZ/08/040

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)

BETWEEN:

STANBIC BANK ZAMBIA LIMITED APPLICANT

AND

SAVENDA MANAGEMET SERVICES LIMITED RESPONDENT

CORAM: Chisanga JP, Makungu and Kondolo SC, JCAs

On 10th November 2016 and 7th December 2016

For the Applicant: Mr. E. S. Silwamba SC and Mr. J. A. Jalasi of Messrs Silwamba, Jalasi and Linyama Legal Practitioners
Ms. A. D. Theotis of Mesdammes Theotis Mataka and Sampa.

For the Respondent: Mr. M. Mutemwa SC, of Messrs Mutemwa Chambers
Mr. Kapungwe Nchito of Messrs N. Makayi & Company
Mr. M. Sinyangwe of Messrs Wila Mutofwe & Company

RULING

CHISANGA, JP delivered the Ruling of the Court

Cases referred to:

1. ***Nkhuwa vs Lusaka Tyre Services Ltd (1977) Z.R. 43***
2. ***Chipili & Another vs Kanchimike And Another (2012) Vol. 3 ZR 483.***
3. ***Twampane Mining Cooperative Societies Ltd vs E And M Storth Mining Limited (2011) ZR 67 Vol. 3***
4. ***Mukumbuta & Others Vs Lubinga & Others (2003) 55***
5. ***Hyyam Lal Dhar vs Ply Board Industries Air (1981) JK 95***
6. ***Finnegan vs Packster Health Authority (1998) 1 All ER 595***
7. ***CM Van Stillevoldt BU vs EL Carriers Inc (1983) 1 All ER 705***
8. ***R vs Dixon (1999) 3 All ER 897***
9. ***Chulu vs Moses Museteka (SCZ /8/051/2013)***

10. *Kumar vs Mutale (2013) ZR 398 Vol. 1*
11. *Nahar Investments vs Grindlays Bank International Zambia Ltd (1984) ZR 81*
12. *Mutantika and Another vs Kenneth Chipungu (SCZ Judgment No 13 of 2014)*
13. *Lapemba Trading Ltd vs Pemba Laboratories & Another (Selected Judgment No. 27 of 2016)*
14. *Nigerian Laboratory Company limited vs Pacific Merchant Bank Limited S.C. 183 (2005)*
15. *July Danobo t/a Juldan Motors vs Chimsoro Farms Limited (2009) ZR 148*
16. *Access Bank (z) ltd vs Group Five/Scon Business Park Joint Venture SCZ 8/52/2014*
17. *NFC Africa Mining Plc vs Techpro Zambia Limited (2009) ZR 236*
18. *Musumba vs The Council of the Copperbelt University SCZ/262/2011*
19. *Ratram vs Cumarasamy (1965) 1 WLR 8*
20. *House vs King (1936) HCA 40*
21. *First Merchant Bank in Liquidation vs Alsham Building Company Ltd and Others (SCZ No. 37/2000)*
22. *Abel Banda vs the People (1986) ZLR 105*
23. *Zambia National Provident Fund Board vs Attorney General and Others (1983) ZR 140*
24. *Veldman vs Director of Public Prosecutions (2006) 4 LRC 420*
25. *Zambia Revenue Authority v. Shah (2001) ZR 60*
26. *DBZ and Mary Ncube vs Christopher Mwanza & 63 Others (SCZ/8/103/081)*
27. *William Bookman vs Attorney General (1994) SJ 94*
28. *Zambia Telecommunication Company vs Muyawa Liuwa (2002) ZR 66*
29. *Ravindranath Morargi Patel vs Rameshbhai Jagabhai Patel (SCZ Appeal No 37 of 2012)*
30. *Peter David Lloyd vs J. R. Textiles Limited (Appeal No. 137/2011, SCZ 8/801/ 2011)*
31. *Socotec International Inspection (Zambia) Limited vs Finance Bank (Appeal No 149 of 2011)*
32. *Palata Investments Ltd and others vs Burst Ltd and Others (1985) ZR 12*

Legislation referred to:

1. *Court of Appeal Rules 2016*
2. *Interpretation and General Provisions Act Chapter 2 of the Laws of Zambia*

3. ***Legal Practitioners Practice Rules Statutory Instrument No. 51 of 2002***
4. ***Order 6 rule 2/5 RSC White Book 1999 Edition***

This ruling is by the majority of the court. It relates to a renewed application to the court for leave to appeal against the judgment of the High Court delivered on the 17th day of August 2016 out of time, and made pursuant to order XIII Rule 3 of the Court of Appeal Rules (1) (CAR). The background to this application is that dissatisfied with the said judgment, the applicant sought the leave of the high court to appeal to this court. That application was dismissed for incompetence. The applicant then applied for leave to appeal out of time. That application too fell on hard ground. The applicant thereafter sought the leave of a single judge of this court to appeal out of time. The single judge refused leave. Hence this application.

The reasons given for being out of time are that the court below heard the interparte application for stay of execution first, instead of the application for leave to appeal, which was delayed as a result. Further, the court below rendered its ruling on the application for leave to appeal after the expiry of the 30 day period in which the applicant could file the notice of appeal. This compounded the misapprehension of counsel about the requirement of leave. Other reasons for seeking leave to lodge appeal out of time are that the delay (to apply for leave to appeal out of time) was not deliberate, nor inordinate. Further, that the intended appeal has high prospects of success; thus, the matter should be determined on the merits. Lastly, it is stated that the respondent will not suffer any prejudice if leave to appeal out of time is granted to the applicant.

The grounds on which it is proposed to agitate the judgment of the court below are that the court below erred in fact and law by finding the applicant negligent, when the respondent's account was in default. Further, that it was an error to order the delisting of the respondent from the Credit Reference

Bureau, in the face of evidence of indebtedness from Bank of Zambia, and the respondent's own admission of indebtedness. According to the applicant, the respondent's consent to be reported to the Credit Reference Bureau was given in the facility letter, and the applicant merely exercised a statutory duty in reporting the respondent to the bureau. Additionally, it is proposed to impugn the judgment of the court below on the ground that no evidence was adduced in support of the claim for damages for injury to business reputation. It is contended further that the respondent failed to prove any loss at trial.

The application is supported by an affidavit in support, sworn by one Charles Mwanyara Mudiwa, Chief Executive Officer of the applicant bank. This affidavit is to the following effect. Upon receipt of the judgment of the lower court, wherein the plaintiff, now respondent, was awarded all the reliefs it had claimed in that court, the applicant, extremely dissatisfied with the entire judgment, instructed its advocates in writing to appeal against the judgment. The letter of instructions is exhibit **'CMM3'.**

Following delivery of the judgment, the respondent's advocates demanded the sum of K192,500,000.00, whereupon the applicant applied for an order to stay execution of judgment pending the hearing of the applicant's application for leave to appeal against the entire judgment. A stay of execution was accordingly granted, and the application for leave to appeal scheduled for the 29th August 2016. That application was not heard on the 29th August 2016, but rescheduled to the 5th of September 2016, on which it was argued, and ruling reserved to a later date. The ruling was delivered on 20th September 2016, and in that ruling the ex-parte order of stay of execution was discharged. The court observed that the parties had proceeded on the erroneous basis that leave of the court was required to appeal against an open court judgment. A writ of fifa was issued against the applicant the following day, and executed for the sum of K192,500,000.00. According to the deponent, the respondent misunderstood the judgment as the matter was referred to assessment.

The applicant then applied for leave to appeal against the judgment out of time, and stay of execution pending that application. The application for stay of execution was heard on the 22nd September 2016, while that for leave to appeal out of time was heard on the 3rd October 2016. The judge in the court below refused to grant leave to appeal out of time.

The applicant subsequently applied for leave to appeal out of time to a single judge of this court. The application was refused, prompting the applicant to renew the application thereof.

The rest of the averments are largely arguments, which we do not intend to recite. The grounds for lodging the application for leave to appeal out of time, and the contents of the affidavit are the same. While we realize the need for brevity, we considered it necessary to distill the contents of the affidavit-in-support, as the chronology of events has a bearing on the application before us. A further affidavit was sworn by one Doris Chomba Tembwe, Head Legal and Company Secretary for the applicant bank. She deposed therein that she timeously furnished the applicant's advocates Messrs M & M advocates with requisite instructions to prosecute the appeal against the judgment of the High Court. She has exhibited the draft copy of the proposed notice of appeal sent to her by the applicant's advocates.

The application is opposed, through an affidavit sworn by one Clever Siame Mpoha, a director in the respondent company. The deponent has referred to the chronology of events in the matter, and gone on to state that on the date execution was levied, the applicant proposed to pay 5% of the K192,500,000.00 in installments of K2,000,000 every day, from the 21st to 25th September 2016. The defendant made one such payment to the respondent's advocates, Messrs N Makayi & Company, and undertook to immediately begin the process of delisting the respondent from CRB.

In substance, the affidavit in opposition asserts that the sum of K192,500,000.00 being a liquidated sum, it did not require to be assessed by the learned Deputy Registrar. That it was the application for stay of execution that was scheduled for hearing, and not the one for leave to appeal out of time. In fact the applicant's advocates conceded that they would proceed with the application for stay of execution and not the application for leave to appeal out of time. It is asserted that the application made by the applicant's counsel was incompetent, and there was no delay in the hearing and determination thereof.

An affidavit in reply, sworn by Charles Mwanyara Mudiwa is on record. It is deposed therein that Kapungwe Nchito, one of the respondent's advocates did not have capacity to enter into purported negotiations directly with the applicants who had counsel on record. Further that the high court judge should have logically listed both applications for hearing on the same date, in succession, the application for leave to appeal out of time being heard first. That the manner in which the high court judge proceeded was prejudicial to the applicant, denying them relief in this court by way of renewal. That the delay in delivering ruling on the stay left the applicant at the mercy of incessant and vicious executions from the Sheriff of Zambia. According to the deponent, delay was occasioned by late delivery of the ruling. The rest of the affidavit consists of arguments and is thus extraneous matter which ought not to be in an affidavit. We will not refer to those matters at all.

Heads of arguments have been filed in by the parties. The applicant's case is put in this way; First it is asserted that this court is reposed with jurisdiction to grant the application. ***Nkhuwa vs Lusaka Tyre Services Ltd***[1] is authority for that argument. The argument is developed by stating that the rule regarding the filing of notice of appeal within 30 days is merely regulatory or directory. Therefore a breach of the rule is not fatal. ***Chipili and Another vs Kanshimike and another***[2] is equally relied upon.

According to learned counsel, the applicant should not be deprived of his right to appeal because the delay is short and the excuse for the delay is acceptable. ***Twampane Mining Cooperative Societies Ltd vs E and M Storti Mining Limited***[3] *is* relied upon in that regard.

The further argument advanced is that the court is required to consider the facts and circumstances of the case in deciding whether or not to grant leave to appeal out of time, as stipulated by Order 59/4/17 Rules of the Supreme Court. That rule states that the factors to be taken into account are the length of the delay, the reasons for the delay, chances of the appeal succeeding if time for appealing is extended and the degree of prejudice to the potential respondent if the application is granted.

On the first element, it is argued that the applicant was only a few days out of time. The application for leave to appeal was filed, one day after the decision of the high court. The delay was not inordinate.

The reason for the delay is that both parties misapprehended the rule regarding the obtaining of leave. Additionally, the court delivered its ruling after the expiry of 30 days from the date of the judgment of the court.

According to learned counsel, the proposed appeal has high prospects of success, and no prejudice will be inflicted on the respondent, who was aware of the intended appeal.

It is learned counsel's plea that the applicant should not be punished for the omissions of their counsel. Support for this argument is said to be the decision in ***Mukumbuta and others vs Nkwilimba and Others***[4]**.** It is argued further that counsel's omission or negligence is sufficient reason for allowing an application to lodge an appeal out of time. In that connection, we are urged to emulate an Indian Court's decision in ***Hyyam Lal Dah vs Ply Board Industries Air***[5] whose decision was that counsel's omission or negligence is

sufficient reason for allowing an applicant to lodge an appeal out of time. This argument is further buttressed by the English cases of ***Finnegan vs Packster Health Authority[6], CM Van Stillevoldt 3V vs E. L. Carriers Inc[7]*** and ***R vs Dixon[8].***

It is finally contended that the single judge did not evaluate the facts presented by the parties correctly. The parties did not engage in negotiations; the purported ex curia negotiations took place during the levying of execution. It is argued that it was not competent to apply for review of the judgment as suggested by the single judge.

The respondent has opposed the application vehemently. The first argument in opposition is that the appellant sat on its right to appeal, by taking out a wrong application. Therefore, the argument proceeds, this application is an abuse of process. ***Chulu vs Moses Muteteka[9]*** is relied upon in that respect. It is learned counsel's further argument that as established by cases like ***Kumar vs Mutale[10],*** courts should not allow applications simply because a party is within his right to do so. Additionally, it is contended that justice demands that cases come to finality, as held in ***Nahar Investments vs Grindlays Bank International Zambia Ltd[11].***

The respondent's further argument is that the statutory limitation of time for appealing is not a procedural technicality but a mandatory requirement imposed by substantive law. It is learned counsel's view that although section 25 of the Court of Appeal Act allows for extension of time, that can only be done for proper and sufficient reason.

In opposing the argument that the negligence or incompetence of counsel is sufficient reason for allowing the present application, learned counsel for the respondent have placed reliance on ***Mutantika and Another vs Kenneth Chipungu[12].*** They have also referred to ***Lapemba Trading Ltd vs Pemba Laboratories and Another[13]*** and ***Nigerian Laboratories Company Limited***

vs Pacific Merchant Bank Limited[14]. It is argued that proceeding with a wrong application was counsel's fault. Any prejudice inflicted on the applicant as a result should be laid at counsel's doorstep. The applicant should proceed against its advocate, as was pointed out in ***July Danodo T/A Juldan Motors vs Chimsoro Farms Ltd***[15].

It is learned counsel's further contention that the present application should be dealt with as was done by the Supreme Court in ***Access Bank (Z) Ltd vs Group Five/Zcon Business Park Joint Venture***[16], ***NFC Africa Mining PLC vs Techpro Zambia Limited***[17] and ***Musumba vs The Council of the Copperbelt University***[18].

Learned counsel's further argument is that in this jurisdiction, jurisprudence and case law do not support incompetence and negligence of counsel as being a sufficient reason, ground or cause arising from ignorance of the law. In addition to the foregoing arguments, it is argued that the proposed grounds of appeal do not disclose any prospect of success, and that the judgment of the court below was well reasoned. Further, that the court below and the single judge of this court exercised their discretion properly in denying the applicant leave to appeal out of time. Premised on ***Ratram vs. Cumarasamy***[19] and **House vs King**[20], it is argued that this court can only interfere with the lower court's and single judge's exercise of discretion if their decision in exercising their discretion was so absurd that no reasonable court could have arrived at it. We are urged to abide by the principle of stare decisis.

In augmenting the heads of arguments on behalf of the applicant, learned state counsel Mr. Silwamba emphasized the applicant's right of appeal to this court. He submitted that the applicant placed capital on the inherent jurisdiction of this court, conferred by section 37 of the Interpretation and General Provisions Act CAP 2. He pointed out that even when time has expired, it is still competent for this court to grant leave especially in a case as the instant one, where the delay has been explained, it is not inordinate but very short, and the prospects

of success, most importantly, are real. Learned State Counsel submitted that the claim before the court below was on tort. It was not competent therefore for the court to award a liquidated demand. On that ground alone, the argument went, it is fit and proper that the matter be heard on appeal. He argued that the respondents will not be prejudiced but would have their day in court.

Mr. Jalasi also augmented the submissions. He argued that the delay of three days that occurred cannot be said to be inordinate. He pointed out that the applicant was vigilant and prompt. The 30 days elapsed while the applicant was waiting for a ruling on the application, and could have done nothing. Even after refusal of leave, the applicant made a prompt application for leave to appeal out of time. Therefore, according to learned counsel, this court should exercise its discretion favourably on account of promptness.

Learned counsel distinguished the ***Mutantika*** case from the instant one by pointing out that the conduct of the appellant was such that the court was correct in refusing to exercise their discretion, while in the present case, counsel made an incompetent application, believing that they needed leave to appeal. The mistaken belief was shared by both parties. That therefore, the respondent cannot use that reason to argue that the exercise of discretion should be denied. It is contended that there was no malafides on the applicant's part and the reason advanced is sufficient.

Lapemba Trading vs Pemba laboratories[13] was equally distinguished, on the ground that the appellant was out of time, and granted leave. The court used very strong language in refusing the application, and understandably so. Mr. Jalasi argued that no new issues were raised in this court, as all had been raised before. Reliance on the Chulu case is therefore misplaced.

Ms. Theotis pointed out that the delay is very short, obviating the need to interrogate prospects of success. Nonetheless, the applicant has alluded to the prospects of success to be on the safe side. Learned counsel referred to ***Order***

6 rule 2/5 RSC 1999, which rule defines a liquidated demand as being in the nature of a debt by virtue of a contract, not arising from tortious conduct. She pointed out that the sum of K192,500,000 awarded to the respondent appears only once in the judgment, and that the said amount was not interrogated. It cannot therefore be a liquidated sum.

Ms. Theotis went on to argue that the Supreme Court talked about dilatory conduct, inordinate delay and unfair prejudice, in the ***Nahar Investment***[11] case. That was the basis for the refusal to extend time. In the present case, the applicant is not guilty of dilatory conduct. Further, that the respondent has failed to show how it will be unfairly prejudiced if the appeal proceeds. She pointed out that there was deliberate inaction in the Nigerian case.

Regarding the Access Bank case, learned counsel submitted that the Supreme Court seemed to be departing from the strict holding in that case in two subsequent cases ***First Merchant Bank in Liquidation*** **and** ***Alsham Building Materials Ltd Vs Jayesh Shar***[21] where they said:

> *"The decision to dismiss or not to dismiss will depend on the circumstances of the case. If the breach is not serious, this court will simply order the defaulting party to rectify the default and where necessary condemn that party in costs. This is what we established in Bank of Zambia as liquidator of Credit Africa Bank Ltd in liquidation. We specifically said, "It is not every breach of a procedural rule. There are levels of breach."*

Ms. Theotis urged the court to grant the applicant leave to appeal out of time.

In opposing the application Mr. Mutemwa SC began by emphasising the principle of stare decisis, which is sacred to the Supreme Court itself. He argued that the issue before this court is not novel, the Supreme Court having pronounced itself upon it in a myriad of cases. He referred to ***Abel Banda Vs***

The People[22] in that connection. Learned State Counsel argued that failure to file the appeal within 30 days is fatal to the intended appeal. He however stated that the court could enlarge time for sufficient reason under Order 13 rule 3/3 of the Rules of the Court of Appeal. He expressed the view that the incompetence of counsel is insufficient reason for this court to enlarge time. He contended that the *ratio decidendi* of the ***Mutantika*** case applies with equal force to the instant case. He argued that the same position should be taken by this court, as it is bound by the principle of stare decisis. Learned State Counsel pointed out that the responsibility to apply lay on counsel. It was not the duty of counsel to advise the court whether the application was right or wrong. He argued that the court should not countenance the trivialising of counsel's conduct.

Learned State Counsel argued that in this jurisdiction, factors such as prejudice and length of time are not considered by the Supreme Court where there is no explanation for delay. The Supreme Court rejects applications where there is no explanation for delay, without looking at other factors, apart from the delay itself. That is what they did in the ***Oswald Chulu*** case. They did not look at other factors. The same approach was taken in the ***Mutantika*** case. In the ***Nahar Investments*** case, they found a sufficient reason, and thereafter adverted to other factors,

Learned State Counsel urged the court not to consider other factors, but outrightly reject the application for insufficient reason. He went on to argue that resort to English cases can only be made where there is a lacuna. This court, the argument went, should ignore the cases cited on behalf of the applicant.

He argued that the ***Mukumbuta*** case had been overtaken by the ***Mutantika*** case. Further, that even where there is a short delay, the excuse for delay must be acceptable. He distinguished the ***Zambia National Provident Fund Board***[23] case, as well as ***Veldman Vs DPP***[24], arguing that prejudice and other

factors are considered where there is sufficient reason. According to counsel, the circumstances in the ***Nkuwa*** case did not include incompetence of counsel.

Learned counsel further argued that in ***Shah vs ZRA***[25], the omission was a minor one while in the present case, there was a fundamental error by counsel who went on a wrong voyage. The two cases are totally different. He submitted that fair justice must be done to both parties by not derogating from established precedent by the Supreme Court. The lapse in this case is not a procedural irregularity, but a major omission upon which the Supreme Court has adequately ruled. The relationship between a lawyer and a client being irrelevant, the ***Finnegan*** and ***Bengal*** cases are inapplicable.

Regarding the allegation made against learned counsel concerning his representation of the high court judge's former law Firm while the latter was a legal practitioner, learned state counsel stated that the perception of bias was far-fetched. In that connection, he referred to ***Mumba vs Patel***[26].

In further augmentation of the heads of arguments, Mr. Sinyangwe argued that the delay was not caused by the high court judge, and it is improper to blame the judge. Reiterating the arguments on sufficient cause made by Mr. Mutemwa SC, Mr. Sinyangwe referred to ***DBZ and Mary Ncube & Christopher Mwanza & Others***[27]. He argued that a party in default should reap the consequences of inertia. He submitted that no error was made by the single judge in the exercise of his discretion, and that the application was devoid of merit, thus liable to be dismissed with costs.

Mr. Nchito equally augmented the heads of arguments. He argued that the reasons for the delay have changed in this court. He referred to the ***Oswald Chulu***[9] case, and ***William Bookman Vs Attorney General***[28]. He argued that in considering the application, the court should examine the reasons given before the single judge, to see whether they are consistent or false. According to

learned counsel, there was an admission of the debt. He urged the court not to be swayed by sympathy in deciding the application before it.

In response to these arguments, Mr. Silwamba, SC, conceded that time to appeal is prescribed by section 25 of the Court of Appeal Act. He pointed out however that Parliament foresaw that there might be default. That was why it enacted Order XIII of the Court of Appeal Rules.

Conceding that the principle of stare decisis was applicable, he pointed out that the Supreme Court had rendered subsequent decisions. He referred to ***Bank of Zambia liquidator of Credit Africa Bank Ltd in liquidation*** **and** ***Alsham Building Materials*** *(citation unclear)* delivered on 19th July 2016. That case reviewed the Access Bank case as well as the Mutantika case, but still ruled that the dictates of justice demanded that mistakes of counsel be corrected by filing a fresh record. The defaulting party was allowed to remedy the default. The applicant was in default, and has consistently told the truth as to how the default has arisen, and therein lies the distinction from the *Falcon Press* case, where both counsel told lies.

Learned counsel referred to order 59 Rules of the Supreme Court which is clear on how renewals of applications work. He submitted that in taking a further step, a party is at liberty at that hearing denovo to adduce further evidence, while of course maintaining consistency. He urged the court, in considering exhibit 'SM4' referred to by Mr. Nchito, to note the author and addressee of the e-mail and, the provisions of Rule 37(3) of the ***Legal Practitioners Practice Rules Statutory Instrument No. 51 of 2002***. He went on to note that included in the purported admission were legal costs. Regarding Mr. Mutemwa state counsel's grievance with reference to his having represented the high court judge whilst the latter was an advocate, M. Silwamba SC, submitted that the assertions in the affidavit in reply were a response to paragraph 39 of the affidavit in opposition. He submitted that the puisne judge was duty bound to raise the issue himself.

We have considered the impassioned arguments advanced on behalf of the applicant and the equally spirited submissions in opposition. It is imperative for us to point out that Order 13 of the Court of Appeal Rules provides for applications for extension of time and not for leave to file appeals out of time. In future, advocates should head such applications appropriately. An application for leave to file an appeal out of time is ordinarily a simple one in which it is unnecessary to refer to a myriad of decided cases, as has been done in this case. Perhaps that approach is as a result of the fact that this is the third time the applicant is appealing to the discretion of a court, for extension of time in which to file a notice of appeal. As earlier observed the High Court Judge declined leave to lodge appeal out of time, on the ground that the incompetence of counsel is insufficient reason for the grant of leave to lodge appeal out of time. The single judge of this court was of the same persuasion. In his view, the parties engaged in negotiations at the expense of the rules.

The application launched before this court is a renewal. As rightly argued by Mr. Silwamba S.C. on behalf of the applicant, an applicant is not precluded from raising pertinent matters on the renewed application. In so doing however, the reasons he relies upon in persuading the court must be consistent with those raised on the same application before the single judge. In this particular instance, as the application was made before the high court judge, and the single judge of this court, the reasons advanced for the delay in those applications must be consistent with those tendered before us.

The case of ***Chulu vs. Muteteka and Another*** opcit illustrates this principle. In that case the applicant made an application for leave to appeal out of time to a single judge of the Supreme Court. The reasons he gave for not appealing within the prescribed time was that he had travelled to Sesheke and had failed to instruct his lawyers to appeal, because there was no network. The single judge was of the view that the applicant had not provided sufficient reason warranting the grant of leave. The applicant renewed the application to the Supreme Court. The reason he gave for failing to appeal within time was that

the case record had gone missing after delivery of judgment. Learned counsel appearing for the respondent argued that that reason was an afterthought, as it was not alluded to when the application was made to the single judge. Further, that the varying reasons showed lack of consistency and amounted to improper conduct and malafide.

In considering the application, the Supreme Court held that the applicant needed to provide sufficient reasons for bringing the application. The court said they could not ignore the affidavit evidence presented before the single judge and the court below. They found it strange that the reasons given for the delay had changed, observing that the sincerity of the applicant had thereby been brought into question. They were of the view that the reasons given by the respondent in his affidavit in support showed lack of seriousness. The court said they could not encourage litigants who sat on their rights to abuse the court process. They distinguished the ***Nahar Investments*** case from the ***Chulu*** case; observing that the delay in the ***Chulu*** case was due to the fact that the applicant left Lusaka for Sesheke and took time to consult his co-petitioner and ended up running out of time.

To put the distinction made by the supreme Court in the ***Chulu*** case referred to above and the ***Nahar Investments*** case in perspective, it is necessary to advert to the ***Nahar Investment*** case. In that case, the notice of appeal was filed late, in fact necessitating an application for leave, which was granted. The 60 days in which to lodge the appeal expired. An application to dismiss the appeal was lodged, whereupon the appellant applied for extension of time. The appellant was given 30 days extension. Even then, the appellant was unable to obtain a transcript of the notes of the proceedings. A further extension of time was granted, the appellant having not obtained the transcript of notes in time. The Supreme Court was of the view that an applicant was obliged to apply for extension of time timeously even when they had a good reason for being out of time. The Supreme Court found in effect that the appellant had a good excuse for its failure. Therein lies the distinction between the *Nahar Investments* and

Chulu cases. In the *Chulu* case, the applicant did not give his advocates instructions in time. He dawdled.

In ***Zambia Telecommunication Company vs Muyawa Liuwa***[29] the Supreme Court stated that the application made by a dissatisfied litigant from a decision of a single judge is a renewal. It is not an appeal. Any order, direction or decision made by a single judge may be varied, discharged or reversed by the full court. Our understanding is that the court will consider the application without any fetter on its discretion. While the court will advert to the reasons given for the decision arrived at by the single judge, it will nonetheless be at liberty to exercise its own discretion on the renewed application. The reason is simply that it is not sitting in appeal from the decision of the single judge; rather it is hearing the application as a court.

On the foregoing we are at large to exercise our discretion in accordance with the applicable principles as we are similarly circumstanced.

Order XIII rule 3 of the Court of Appeal Rules confers discretion on the court to extend time for making an application for leave to appeal, bringing an appeal, or taking any step in connection with an appeal. That Order enacts the following:

3. (1) *The Court may, for sufficient reason extend the time for –*

   a. *Making an application, including an application for leave to appeal;*
   b. *Bringing an appeal; or*
   c. *Taking any steps in or in connection with an appeal*

   (2) An application to the court for extension of time in relation to a judgment or the date of expiration of the time within which the application ought to have been made, shall be filed in the Registry within twenty-one days of the judgment or such time within which the application ought to have been

made, unless leave of the court is obtained to file the application out of time.

(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.

(4) An application to the court for an extension of time under this rule shall-

a. in criminal cases, be substantially in Form XXII set out in the First

b. In civil cases, be substantially in Form XXIII set out in the First Schedule

(5) the Court shall in an order extending the time for doing any act, specify the time within which such act shall be done.

(6) the Master shall not file any notice of appeal or other document instituting an appeal or any application which is delivered after the expiration of the times set out in these Rules unless leave to appeal or to make an application out of time has been obtained, but shall notify the appellant or the appellant's practitioner that the appeal or application is out of time.

In light of these provisions, it was unnecessary to refer to section 37 of the Interpretation and General Provisions Act.

The analogous provision in the Supreme Court Rules, as amended is rule 12(1) SCR, which provides as follows:

12(1) *the Court shall have power for sufficient reason to extend time for making any application including an application for leave to appeal, or for bringing any appeal, or for taking any step in or in connection with any appeal, notwithstanding that the time limited therefore may have expired, and whether the time limited for such purpose was so limited by order of the court or by these Rules, or by any written law.*

The Supreme Court has in numerous instances pronounced itself on the effect of the rules and the considerations to be taken into account when exercising the power conferred by those provisions. It should be borne in mind that there are several steps that an appellant is required to take in lodging an appeal. How the Supreme Court has dealt with an application made pursuant to rule 12 has depended on the step required to be taken, and the effect of failure to take such a step in prosecuting an appeal. Order XIII Rule 3 Court of Appeal Rules is of similar import as Rule 12 (1) SCR.

Nkhuwa vs. Lusaka Tyre Services Limited[1] is an early case in which the Supreme Court considered an application for extension of time within which to lodge the appeal. It will be observed in that case that a notice of appeal had already been filed. The reason for failure to lodge the record of appeal in time was that the advocate who had conduct of the matter had left the country. Prior to the reported decision, another extension had been sought, and obtained on the same ground, namely that the advocate who had conduct of the matter had left the country.

In determining that application, advertence was made to Order 59 rule 14 Rules of the Supreme Court 1976, which is similar to Order 59 rule 14, Rules of the Supreme Court 1999, currently applicable. In delivering the ruling, Gardner J.S. made reference to *Gatti vs Shoosmith,* a case referred to in the notes to Order 59 rule 14 Rules of the Supreme Court. In that case, the applicant was a few days late in entering an appeal, owing to a misreading of a new rule. The intention to appeal had been notified to the respondent's solicitors by letter sent within the time laid down by the rule. The applicant applied for extension of time on the ground that the failure to enter the appeal within the time limit was due to the mistake of a legal adviser. The court allowed the application on the ground that a solicitor's mistake was not excluded as a sufficient ground on which the discretion of the court could be exercised. The court took into account the fact that the period involved was a very short one, only a matter of days, and the solicitors had within time

informed the respondent's solicitors by letter of their client's intention to appeal.

Gardner J. S. also adverted to the case of ***Ratram vs. Cumarasammy***[19], where the Privy Council dealt with an appeal against a decision of the court of Malaya, refusing to extend time to appeal in circumstances where the appeal should have been filed 5 days earlier. The reason given for failure to file the appeal within time was that although the appellant had instructed his solicitors to appeal a day before the time to appeal expired, he did not take earlier steps because he was hoping for a compromise. There was an affidavit in opposition that no compromise had been discussed. The Court of Appeal refused the application, and their decision was affirmed by the Privy Council, who expressed the view that to justify a court in extending the time within which some step in procedure required to be taken, there must be some material on which the court can exercise its discretion. The reason proffered for the delay was found not to constitute material on which the Court of Appeal could act to exercise its discretion in favour of the appellant.

Gardner J. S. proceeded to express the opinion that in addition to the circumstances of the delay and the reasons therefore which provide the material on which the court may exercise its discretion, another most important factor is the length of the delay itself. He expressed the view that rules allowing for extension of time are there to ensure that if circumstances prevail which make is impossible or even extremely difficult for parties to take procedural steps within prescribed times, relief will be given where the Court is satisfied that circumstances demand it.

His Lordship went on to state that having regard to the fact that that was the second occasion on which an application had been made on the same grounds because of the appellant's advocates and having regard to the inordinate length of time which had elapsed since the appellant's advocates should have complied with the rules, he had no hesitation in saying that that was not a

case in which the court should exercise its discretion in favour of the appellant by granting the extension of time.

In ***Musumba vs. Copperbelt University***[18], the appeal was dismissed for want of prosecution by a single judge. The appellant then applied to the court, to set aside that order of dismissal. The reason given for the failure to file the record of appeal within the stipulated time was that the trial record along with the transcript of proceedings in the Court below could not be availed to the appellant by the Registrar of the High Court of Lusaka. Therefore, the said record ought to have been deemed to have been lost at the Principal Registry.

In determining that application to set aside the order of dismissal, the Court noted that the parties had filed a consent order, agreeing that the record of appeal be filed within 30 days. Six months later the appellant had not filed the record of appeal, and only sought leave to extend the time when confronted with an application for dismissal of the appeal for want of prosecution. The court held that in as much as Rule 12(1) Supreme Court Rules gives the court wide power to extend time for making an application for extension of time for filing records of appeal, their firm view was that a period of 6 months was inordinate delay. They were thus unpersuaded to exercise their discretionary power to order restoration of the appeal that was dismissed by the single judge of the court. It was further felt that granting the application would amount to condoning breaches of the rules of the Court and encouraging parties to default at will.

In ***Juldan Motors vs Chimsoro Farms Ltd***[15], the appellant applied for leave to file a supplementary Record of Appeal. The application was prompted by the fact that the appeal could not be heard earlier because the record of appeal was incomplete as the transcript of proceedings in the court below was missing from the file in the court below. The application was refused and the appeal dismissed because learned counsel for the appellant had sworn an affidavit in an application before a single judge for leave to file the record of appeal out of

time, stating that he had obtained the record of proceedings from the Assistant Registrar and had compiled the record of appeal. He had deposed that he could not file the record of appeal in time because the 60 days had expired. The single judge granted leave to file the record of appeal within 14 days, and in default, the appeal would be dismissed.

In refusing the application the court observed that learned counsel for the applicant had sworn, in an application before a single judge that he had obtained the record of proceedings and compiled the record of appeal, but was out of time. The court found that learned counsel did not tell the truth when he appeared before the single judge, and obtained leave to file a record he knew was incomplete at that stage. The application was refused because at the time learned counsel applied for leave to file the record out of time, he already had the documents in his possession. There was therefore no basis for allowing the application. The further reason for refusal was that the single judge had made an order which was not complied with.

In ***Access Bank (Z) Ltd vs Group Five/Zcon Business Park Joint Venture***[16] the appeal was dismissed by the court. The applicant, who had been the appellant in the dismissed appeal, applied that the court sets aside its ruling by which the appeal was dismissed. The reason the appeal was dismissed was that some pages were illegible, portions of the evidence tendered in the court below had been omitted from the record before the court, and there were pagination mistakes evident on the face of the record. Having considered the preliminary objections, the court concluded that the record was defective in material respects and the defects so fundamental that they completely negated the rules on preparation of records of appeal.

Upon hearing the motion to set aside the ruling dismissing the appeal, the Supreme Court remained unpersuaded. Affirming the principle that it was desirable for matters to be determined on their merits and in finality rather than on technicalities and piecemeal, the court nonetheless held the view that

justice also required that courts must never provide succor to litigants and their counsel who exhibit scant respect for rules of procedure.

The court equally accepted the argument that not all breaches of procedural rules would suffer the same consequence. In acceding to that argument, the court referred to ***Ravindranath Morargi Patel vs Rameshbhai Jagabhai Patel***[30] where the court said the following:

> *"Rules of Procedure must be followed. However, the effect of breach of the rules will not always be fatal, if the rule in question is merely directory or regulatory".*

The court went on to point out that in ***Peter David Lloyd vs J. R. Textiles Limited***[31], an affidavit and transcript of proceedings had been omitted from the record. The court held that on the facts of that case, the defect was curable and the appellant was allowed to amend the record of appeal accordingly.

Socotec International Inspection (Zambia) Limited vs Finance Bank[32] was also referred to, as a case in which the appellant whose record had omitted certain documents was allowed to amend the record. In that case, the court said:

> *"Whether the appeal will be dismissed or not will depend on the peculiar circumstances of each case".*

The court was of the view that the wording of Rule 68(2) is not a panacea for allowing all procedural shortfalls. Whether or not an appeal would be dismissed under that rule is to be taken on a case by case basis.

In effect, the Supreme Court stated that it is discretion which always animates the making of the decision whether to dismiss or not dismiss process for failure to comply with court rules.

In ***Mutantika and Another vs Kenneth Chipungu***[12], the appeal was dismissed. A notice of motion to restore the appeal to the active cause list was

as a result taken out by learned counsel for the appellant. The grounds on which the appellants sought to persuade the court to restore the appeal were that they were represented by Mr. Makebi Zulu of Messrs Makebi Zulu Advocates. He informed the appellants of the date of hearing, but was not in attendance at court on the date of hearing. The appellants attended court but did not indicate their presence when the appeal was called for hearing. They did not get a satisfactory explanation from Mr. Makebi Zulu as to why he did not file heads of arguments on their behalf, or attend court. They thus applied for restoration of the appeal arguing in effect that they should not be prejudiced by their counsel's failure to attend court and for his negligence and or incompetence to file heads of arguments.

In determining the application to restore the appeal to the active cause list, the Supreme Court noted that the appeal was dismissed on two grounds, viz, the failure to file heads of arguments contrary to Rule 70(1) and the non-appearance of both the appellants and their counsel in court contrary to rule 71(1), Supreme Court Rules. It was noted further that the court also took into account the fact that the appellants and their counsel were aware of the hearing date as they had in fact, been reminded of the hearing date and the need to file heads of arguments by the learned counsel for the respondent. The court also noted that the Record of Appeal was filed as far back as June 2012.

To the earnest plea that the appellants, who did not know the reason why their counsel did not file the heads of arguments, should not be prejudiced by the default, negligence and or incompetence of their counsel, the Supreme Court responded that Rules 70(1) of the Supreme Court Rules and 58(5) as amended by Statutory Instrument No 26 of 2012 are mandatory. Both provisions are couched in a mandatory manner as each uses the word *"shall"*. The two Rules are therefore not regulatory as they do not at all give the court discretionary power. The Rules provide the following:

58(5) *"The appellant shall file in the registry thirteen hard copies of the record of appeal, including an electronic copy thereof, together with the heads of arguments.*

70(1) An appellant or respondent who will be represented by a practitioner at the hearing of the appeal shall prepare a document setting out the main heads of his argument together with the authorities to be cited in support of each head."

The Supreme Court went on to hold that any breach of Rule 58(5) is fatal to a party's appeal as a result. The court observed further that although the Record of Appeal was filed as far back as 29th June 2012, Heads of Arguments were not filed in total breach of Rule 58(5) and the default continued for a period of more than 14 months. The court then made this statement:

> *"Having illustrated that the failure to comply with Rule 58(5) as amended is fatal, it followed that the vehement plea by the appellants, effervescent as it was, that the default of their legal counsel and or/his negligence or incompetence should not be visited on them is, inconsequential and flies directly in the teeth of Rule 58(5) of the Supreme Court Rules".*

In contrast to Rule 58 (5), the court observed that Rule 71(1)(a) conferred discretion on the court, whether or not to dismiss an appeal in the absence of the appellant or his practitioners. Since the appellants were not absent, but were in court when the appeal was called, the court ruled that Rule 71(1)(a) was not applicable to the appellants. The application to restore the appeal was dismissed as a result.

In ***Twampane Mining Cooperative Societies Ltd vs E and M Storth Mining Limited***[3], the facts were that a High Court Judge delivered a ruling on 16th April 2009, and in that ruling, granted leave to appeal to the supreme Court. The appellant did not appeal within the prescribed 30 days. On the 39th day, the appellant made an application for leave to appeal out of time. The High

Court judge noted that the explanation put forward by the appellant for the failure to file the application in time was because it had to consult amongst its members who were dispersed in different towns. The learned judge found that the length of the delay, especially that the matter arose as a result of an arbitral award, could not be regarded as short, and that the appellant had sat on its rights. Further, the court found that the attempt at ex-curia settlement only arose after the application was filed into court and refused to take judicial notice of the fact that the matter had room for ex-curia settlement. According to the learned judge there was no evidence that the parties attempted to settle the matter out of court before the appellant ran out of time. She further held that the prospect of the appellant succeeding on appeal was dim and that the affidavit in support did not show that the appeal had any prospect of success. The learned judge dismissed the application with costs.

Dissatisfied with that ruling, the appellant appealed to the Supreme Court. It was held by that court that there was no evidence that the parties attempted to settle the matter ex-curia before the appellant ran out of time. The court held that that was an important consideration which could have been of assistance to the appellant. The court agreed with the court below that the length of the delay could not be regarded as short, and that factor was compounded by the fact that the matter arose out of an arbitral award. The court went on to state that in an application for extension of time, the lower court was at large to consider the prospect of success of the appeal.

We have set out the facts of the several cases cited by the learned counsels in order to highlight the nature of the applications before the Supreme Court in those cases, and the approach taken by that court. The ***Nkhuwa*** and ***Twampane*** cases dealt with applications for extension of time within which to appeal. Contrary to the argument by learned counsel for the respondent, the ***Twampane*** case, endorsing the ***Nkhuwa*** case held that it was competent to look into the merits of the proposed appeal when dealing with an application

for extension of time in which to appeal. Although the trial judge found that the delay was inordinate, she nonetheless looked into the merits. Therefore, in determining an application for extension of time within which to appeal, the Court will have regard to the circumstances of the delay, the reasons for the delay, and the length of the delay. Further, it will in certain instances look at the merits of the proposed appeal. The ***Twampane*** case leaves no doubt in that respect. Mr. Mutemwa's argument in that regard is clearly pregnable.

The ***Juldan Motors***[15] case was concerned with failure to file a record of appeal timeously. So was the ***Masumba***[18] case. The Supreme Court refused extension of time on grounds of malafides, and inordinate delay. In the ***Access Bank*** case, the court took the view that the record was defective in material respects, and that the defects were so fundamental that they completely negated the rules in preparation of the records of appeal. The ***Mutantika***[12] case was concerned with failure to comply with a mandatory provision of the Rules.

It is rendered clear by these cases that each application will be considered on its own facts. It is thus inappropriate to uplift the *ratio decidendi* of the Supreme Court in one case with its own peculiar facts dealing with a specific rule, and apply it to all cases in a regimented manner regardless of the applicable rule/rules. It has been argued most emphatically and repeatedly by learned counsel for the respondent that the negligence of counsel is insufficient reason. We note that a lot of short comings in the prosecution of appeals are as a result of inattention to the rules by learned counsels who appear on behalf of the parties. This is what occurred in ***Socotec International Inspection (Zambia) Limited vs Finance Bank***[32]**.** Yet the Supreme Court allowed the appellant to amend the record. This equally occurred in ***Peter David Llyod vs J. R. Textiles Limited***[31] where the appellant omitted an affidavit and transcript of proceedings. The Supreme Court held that on the facts of that case, the defect was curable. These cases were referred to with approval by the Supreme Court in the ***Access Bank*** case.

As we see it, it matters not that an error is made by learned counsel or an appellant in person. It is the effect of the transgression that will determine how a particular application will be dealt with. An advocate is agent of his client, so that the action of counsel is generally that of his client. When counsel fails to prosecute a matter in accordance with the rules, it is in effect his client who would have failed to take the steps laid down in the rules. It is clear that in some instances, even where learned counsel has failed to take a step out of negligence or incompetence, the Supreme Court has nonetheless exercised its discretion in favour of the appellant in appropriate circumstances. In re-affirming that the court exercises its discretion, the court said this in the *Access Bank* case at J27.

> *".....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 applicant had rightly submitted, this invariably implicates the exercise of judicial discretion. Since facts of two cases are never always the same, a court cannot be bound by a previous decision to exercise discretion in a regimented way because that would be, as it were, putting an end to discretion."*

These words underscore the need for the court to examine the circumstances of each particular case, in exercising its discretion. In our considered view, this approach is applicable whenever the discretion of the court is appealed to under the rules. As earlier indicated, our understanding of the ***Mutantika*** case is that the rule transgressed by the appellant's advocate conferred no discretion on the court. Therefore, the incompetence or negligence of learned counsel was inconsequential.

Where a particular rule confers discretion on the Supreme Court, that court has exercised its discretion accordingly. We are similarly placed. We are therefore at large to consider the application before us. The ***Nkhuwa*** case is the starting point. The Supreme Court cited ***Gattie vs Shoosmith*** case with

approval. That case established that a solicitor's mistake was not precluded from being sufficient ground on which the discretion of the court could be exercised. We have equally pointed out instances where the Supreme Court exercised its discretion in favour of a party, notwithstanding that it was counsel who omitted to take a step in the proceedings. We have also distinguished the ***Mutantika*** case from the present case, on the ground that the rule considered in that case was mandatory. In the present case, although section 25 of the Court of Appeal Act provides that a person who intends to appeal is required to do so within 30 days, Order XIII of the Court of Appeal Rules *supra* confers discretion on the court to extend time in which an appeal can be brought for sufficient reasons. Therein lies our discretion. Therefore Section 25 of the Court of Appeal Act is not strictly speaking a mandatory provision.

The facts presented by the parties both before the court and the single judge are that judgment was delivered on the 17th August 2016. Instead of lodging a notice of appeal, learned counsel appearing for the applicant applied for leave to appeal, and for stay of execution. The application for leave to appeal was received by the registry without further enquiry. The matter was allocated to a judge for hearing. This was necessitated by the elevation of the trial judge to this court. The high court judge to whom the matter was allocated dealt with an exparte application for stay of execution, and on the return date, which was 29th August 2016, proceeded to hear the application interpartes. He however refused to hear the application for leave to appeal, on the said date, which was indicated on the summons, apparently without his involvement, but by the Marshall. The application for leave to appeal was deferred to the 5th of September 2016, on which date it was argued. Ruling was reserved to a later date.

In his ruling, the learned judge held that leave to appeal was not required, and rejected the application. He also discharged the stay of execution. The

appellant applied for extension of time within which to appeal. The application was rejected, on the ground that the incompetence of counsel was insufficient reason. Although we are not sitting in appeal, from the decision of the high court judge, we must state that his approach was wrong. Firstly, as earlier noted, the principle applied was taken out of context. In this case the judge was not dealing with a mandatory provision. He was dealing with an application in which his discretion was unfettered. Secondly, he failed to take account of the fact that the applicant ran out of time while waiting for delivery of the ruling on its application for leave to appeal. Ideally, when a judge receives an incompetent application, he or she is not required to waste time hearing such an application. Rather the judge should indicate that the application is incompetent on the papers. This is in accord with good case management. Therefore the application for leave should not have been entertained by the high court judge as he knew that it was incompetent.

The record reveals that the respondent was aware that the applicant intended to appeal against the judgment. This is amply demonstrated by the application for leave to appeal, which was served on the respondent and argued by the parties. The period of delay was very short. The ruling refusing leave was delivered three days after time within which to appeal had expired. The application for extension of time was made soon after that ruling. It was made promptly. The appellant should not as a result be deprived of his right of appeal, and no question of the merits of the appeal arises. This view is premised on the proposition formulated in ***Palata Investments Ltd and others vs Burst Ltd and Others***[33] considered with approval by the Supreme Court in the ***Twampane*** case. We note however that the court in the ***Palata*** case went on to say that in some cases, it may be material to have regard to the merits. That is the approach the Supreme Court took. We must however state that in this case it is immaterial to consider the merits at this stage, as the delay was short.

Our considered opinion is that the error made by learned counsel for the applicant in asking for leave when no leave was required is sufficient reason on which we can exercise our discretion to extend the time within which to file a notice of appeal against the judgment of the court below, as we have seen no malafides on the applicant's part in that respect. In so saying, we have considered all the circumstances that led to the delay in filing the notice of appeal and are persuaded that sufficient reason exists for exercising our discretion in favour of the applicant.

Additionally, it has not been demonstrated that the respondent will suffer prejudice if the appeal is heard. Nor has it been shown that third parties have acquired rights under the judgment, which would be prejudiced as a result of extending time within which to appeal.

It was argued that the applicant admitted that part of the judgment sum which was liquidated by offering to settle 5% thereof. That argument is misplaced, because the negotiations for a settlement were prompted by execution of the judgment which had taken place in spite of the applicant's clear intention to appeal.

On the foregoing, the arguments of the respondent are unsustainable. Both the learned high court judge, and the single judge of this court misapplied the *ratio decidendi* in the ***Mutantika*** case. The single judge overlooked the fact that the Supreme Court was there concerned with a mandatory rule, concerning which they had no discretion. It is equally clear that the parties did not "engage in negotiations at the expense of the rules" as the single judge put it. The purported negotiations occurred during execution, after the application had been refused. The single judge of this court considered that applying for review was an option for the applicant. Our view is that review is available on specified grounds not present in this case. Therefore that was an irrelevant consideration.

This is a proper case in which to exercise our discretion in favour of the applicant. The dictates of justice demand that this case be determined on its merits, more so that we are persuaded that sufficient reason exists for the delay in filing the appeal within the time prescribed by the rules. We therefore extend the time within which to file the notice of appeal against the judgment of the court below. The applicant should file a notice of appeal within 14 days from the date of delivery of this ruling. The costs hereof are awarded to the respondent in any event.

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F. M. CHISANGA
JUDGE PRESIDENT
COURT OF APPEAL

.....

C. K. MAKUNGU
COURT OF APPEAL JUDGE