

**IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)**

CAZ/08/117/2017

Between:

LUNGISIANI WEBSTER LUNGU

AND

**THE ATTORNEY GENERAL
MINISTRY OF LOCAL GOVERNMENT AND HOUSEING**

APPELLANT

**1ST RESPONDENT
2ND RESPONDENT**



Before the Honourable Mr. Justice C. F. R. Mchenga

For the Applicant: In person

For the 1st Respondent: No appearance

For the 2nd Respondent: No appearance

R U L I N G

Cases referred to:

1. **D. E. Nkhuwa v Lusaka Tyre Services Limited [1977] Z.R. 43**
2. **Twampane Mining Co-operative Society Limited v E & M Storti Mining Limited [2011] 3 Z.R. 67**

Legislation referred to:

1. **The Court of Appeal Rules of The Court of Appeal Act SI No. 17 of 2016**
2. **The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia**

The applicant, has pursuant to the provisions of **Order 13 rule 3 of the Court of Appeal Rules of the Court of appeal Act**, applied for leave to appeal out of time.

The history of the matter, in a nutshell, is that the applicant, who was Deputy Treasurer for Mambwe District Council, was dismissed from employment on 29th June 2004. He appealed to the Local Government Appeals Board and his dismissal was downgraded to a discharge. Desirous of having the discharge reviewed to a retrenchment, he appealed to the Minister of Housing and Local Government.

On 7th May 2007, the Minister of Local Government and Housing wrote and informed him that his case conclusively dealt with by the Provincial Appeals Board and that if he was not happy with their decision, he should proceed to court. He did not. He appealed to the Local Government Service Commission sometime before 2014. On 20th May 2016, the commission informed him that following the decision of the Provincial Appeals Board in 2004, they had no jurisdiction to hear his appeal.

In June 2016, he lodged a complaint with the Industrial Relations Court. He complained that his dismissal was both unlawful and unfair. The 1st respondent objected to the complaint indicating that it was time barred. On 30th March 2017, the trial Judge dismissed his complaint after finding that it was time bared

because it was lodged more than two years after the event on which it was premised and the applicant did not seek leave of the court to launch it as required by **Section 85 of the Industrial and Labour Relations Act**. The applicant was granted leave to appeal against the decision within 30 days but he did not do so.

On 10th May 2017, he applied to this court for leave to file his notice of appeal out of time. In the affidavit in support of his application, he deposed that the basis of his appeal is that the disciplinary procedure was not complied with when he was dismissed from employment. In addition, the respondents failed to consider his pleas that the matter be dealt with administratively. Further, he was not in good health in the years 2005, 2012 and 2013 because he is leaving with HIV/AIDS. Finally, he deposed that he delayed filing his complaint in the court below because he was obstructed by registry staff. He also deposed that when the matter came up for hearing in the court below, he was not given the opportunity to be heard.

The applicant filed in written submissions which he complimented with oral submissions at the hearing. In his submissions, he repeated the contents of the affidavit in support of the application which I have just recounted.

Order 13 rule 3 (1) of the Court of Appeal Rules, which deals with applications for leave to appeal out of time provides as follows:

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)**

In the case of **D. E. Nkhuwa v Lusaka Tyre Services Limited (1)**, it was held, *inter alia*, that:

The granting of an extension of time within which to appeal is entirely in the discretion of the court, but such discretion will not be exercised without good cause.

Further, in the case of **Twampane Mining Co-operative Society Limited v E & M Storti Mining Limited (2)**, it was held, *inter alia*, that:

An appellate Court is entitled to look into the merits of the appeal when considering an application for extension of time.

The ruling dismissing the applicant's complaint was delivered on 10th May 2017 and he filed his notice of appeal out of time on 30th March 2017. The reason for the delay is that he was making consultations before finally deciding to appeal. This, in my view, is not a good reason for extending time within which he should file his notice to appeal.

Further, I have considered the prospects of the intended appeal succeeding.

Section 85(3) of the Industrial and Labour Relations Act provides that:

The Court shall not consider a complaint or application unless the complaint or applicant presents the complaint or application to the Court-

- (a) Within 90 days of exhausting the administrative channels available to the complainant or applicant; or
- (b) Where there are no administrative channels available to the complainant or applicant, within 90 days of the occurrence of the event which gave rise to the complaint or application:

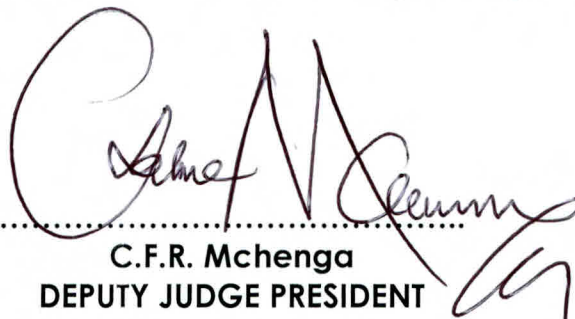
Provided that-

- (i) Upon application by the complainant or applicant, the Court may extend the period in which the complaint or application may be presented before it

Since the applicant did not file his complaint within 90 days of the Local Government Commission dismissing his appeal, he was required to obtain leave before filing it. The failure to obtain leave before filing the complaint, a mandatory requirement, led to the dismissal of his complaint. It is my view, that even if he is granted leave to file his appeal out of time, the prospects of the appeal succeeding are deem because he failed to comply with a mandatory requirement.

I find no merits in the application and I dismiss it. The parties will bear their own Costs.

Delivered in chambers at Lusaka this 18th day of August 2017.


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C.F.R. Mchenga
DEPUTY JUDGE PRESIDENT