

**IN THE SUPREME COURT OF ZAMBIA**

**SCZ/8/93/2013**

**HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*

BETWEEN:

**COSTAIN SIMAMBA**

**AND**

**AMDAC-CARMICHAEL LIMITED**

**ALAN PALMER**



**APPELLANT**

**1<sup>ST</sup> RESPONDENT**

**2<sup>ND</sup> RESPONDENT**

**Coram: Mwanamwambwa, DCJ, Hamaundu and Chinyama, JJS  
on 25<sup>th</sup> January, 2017 and 31<sup>st</sup> August, 2017**

For the Appellant : Mr M. Chiteba, Messrs Mulenga Mundashi and  
Kasonde Legal practitioners

For the Respondent: Mr C. K. Bwalya, Messrs D. H. Kemp and Co

## **JUDGMENT**

**HAMAUNDU, JS, delivered the Judgment of the Court**

This is a renewed application by the appellant for extension of time to file the record of appeal.

The background to this application is this: Being dissatisfied with a judgment of the High Court delivered on the 26<sup>th</sup> March,

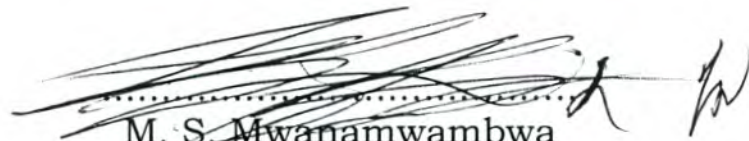
2013, the appellant filed a notice of appeal in the Supreme Court Registry on 2<sup>nd</sup> April, 2013. The notice of appeal was not filed together with the memorandum of appeal as required by the amended rules of 2012. No one noticed the omission at the time. On the 19<sup>th</sup> June, 2013, having been in default of filing his record of appeal by only seventeen days, the appellant applied for leave to file his record of appeal out of time. It was during the hearing of the application before a single judge of this court that the appellant's omission when filing the notice of appeal was discovered. The single judge of this court dismissed the application on the ground that the appellant should have cured the defect first before making the application. The appellant is now before the full bench and would like us to exercise our discretion and allow him to file the memorandum of appeal together with the record of appeal out of time.


The motion stands opposed by the appellant; first, on the technical ground that it is incompetent, having been made out of time. Secondly on the ground that, on the merits, the appellant could not make an application to lodge the record of appeal out of time without curing the omission.

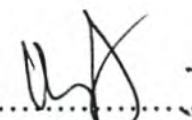


At the hearing both advocates addressed us mainly on **Rules 12, 48 and 54** of the **Supreme Court Rules**. However the view we take in this application is that the appellant simply chose to be obstinate. In dismissing the appellant's application at that time, the single judge merely wanted the appellant to cure the defect first before making the application. We do not see what the appellant found difficult about curing the defect first and then coming back to make the application. If the appellant had followed the approach alluded to by the single judge, the main appeal would probably have been disposed of by now. Therefore, we decline to set aside the single judge's ruling. We dismiss the application. The appellant is still at liberty to cure the defect and then apply to lodge the record of appeal out of time.

We award costs to the respondent, to be taxed in default of agreement.

  
 M. S. Mwanamwambwa  
**DEPUTY CHIEF JUSTICE**

  
 .....  
 E. M. Hamaundu  
**SUPREME COURT JUDGE**

  
 .....  
 J. Chinyama  
**SUPREME COURT JUDGE**