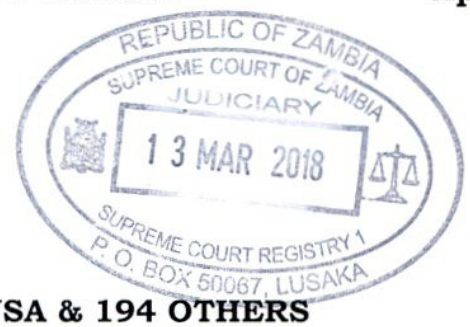
IN THE SUPREME COURT OF ZAMBIA **Appeal No. 99/2015**
HOLDEN AT NDOLA
(Civil Jurisdiction)



BETWEEN :

EDWARD CHILUFYA MWANSA & 194 OTHERS **APPELLANT**

AND

KONKOLA COPPERMINES PLC **RESPONDENT**

Coram: **Mambilima CJ, Malila and Musonda, JJS on 6th March, 2018 and 13th March, 2018**

For the Appellant: In person (Mr. Edward Chilufya Mwansa and Mr. Kenneth Mukunto)

For the Respondent: N/A

J U D G M E N T

Malila JS, delivered the judgment of the court.

Case referred to:

1. *D. E. Nkhuwa v. Lusaka Tyre Services Ltd. (1977) ZR 43*

Legislations referred to:

1. *Industrial and Labour Relations (Amendment) Act No. 8 of 2008*
2. *Halsbury's Laws of England, Vol. 44(1) 4th Ed. P.867.*

The protestation of the appellants in this case is probably well summed up in the saying that justice may be blind but is certainly not deaf.

Edward Chilufya Mwansa and 194 others are former Konkola Copper Mines Limited and KCM Smelterco employees who were either retired or medically discharged. Their separation from employment occurred mainly between 2004 and 2007 and, in a few cases, before that period. Being unhappy with their separation packages they sought to commence proceedings in the Industrial Relations Court against their former employer. They engaged the respondent company directly and later through the intervention of the Labour Office with a view to finding an *ex curia* settlement to their grievance.

It turned out that their search for an amicable solution lasted over three years. When it became apparent that they were unlikely to derive any joy from the course they were pursuing, they determined to have the court adjudicate on their complaint. One thing, however, stood in their way: section 19 of the **Industrial and Labour Relations (Amendment) Act No. 8 of 2008**, which enacts that a

court shall not entertain an application or matter unless it is brought within 90 days after exhausting the administrative procedures, or where there are no administrative procedures, within 90 days from the occurrence of the event which gave rise to the complaint.

The complainants took out an application for leave to lodge a complaint out of time. The Industrial Relations Court did its arithmetic and came to the conclusion that the applicants came to court at least seven years after the events that gave rise to the complaint. Taking into account the period of the appellants' administrative engagement with the respondent, the court found that over three years had elapsed before the application for leave was lodged. It accordingly declined to grant leave to file the complaint out of time as the delay was considered inordinate.

It is the court's decision which has riled Mr. Mwansa and his colleagues. They have now appealed on six grounds - rather five, framed as follows:

1. **The below court errored in law and fact that they did not consider that complainants were trying to resolve the matter**

administratively and went further to the Ministry of Labour. The complainants followed the right channel. [sic!]

2. **The appellant did mention the three names of the Presidents even through the ruling in the below court states that no name of the President was mentioned and the names mentioned were the late President Dr. Levy Mwanawasa, Mr. Rupia Banda and the late Michael Sata.** [sic!]

3. **The below court errored in law and fact that the delay was being made by the respondent and not the applicants since they were kept on being told to be patient until they were made to be out of time.** [sic!]

4. **The appellant further went to the President who also advised them to wait. He died before he could even attend to them. The other President Mr. Rupia Banda also took over and also advised them to wait. He was out of office, the late President Michael Sata took over and also promised to look into our matter, unfortunately he passed on.** [sic!]

5. **That the delay has not been deliberate. When the Labour Office took over, they were supposed to advise us appropriately. Had the Labour Office advised appropriately we were going to lodge in the complaint within time at the Industrial Relations Court. Due to lack of advice, we went to State House.**
   The appellant did not just stay idle, but that we were trying to have our matter resolved administratively. [sic!]

6. **That the other reason shall be adduced in court during the hearing of this matter.** [sic!]

At the hearing of the appeal, the lead appellant, Edward Chilufya Mwansa, was joined by Kenneth Mukunto in making representations on behalf of all the appellants. Having satisfied ourselves from the record kept by the Clerk of Court that the respondent was served with the notice of hearing on 14th February, 2018, we were content to proceed to hear the appeal in the absence of the respondent.

Heads of argument were filed by Edward Chilufya Mwansa on behalf of all the appellants. In those heads of argument, all the grounds were argued compositely.

It was the contention of the appellants that the lower court focussed its ruling, rejecting the application to lodge complaint out of time, on one complainant only, namely, Edward Chilufya Mwansa and not the 194 others. It was submitted that the said Edward Chilufya Mwansa merely joined colleagues who had initiated their claim as way back as 2007. The appellants narrated how they engaged successive Presidents of Zambia in their quest to find a solution to their problem and how all their exertions ended in grief. The lower court, according to the appellants, did not pay heed to the explanation given for their delay in lodging their complaint and

furthermore the court ignored all the documents they filed to substantiate their narrative. They submitted that the court instead preferred to use section 19 of Act No. 8 of 2008 to bar their claim. For a court of substantial justice, this approach, according to the appellants, was a misdirection.

The appellants also alluded to their important role in building the economy of the country and how they have now been reduced to destitution, adding that they deserve some respect and dignity as is accorded to workers in other sectors. They prayed that we uphold the appeal.

The respondent did not file any heads of argument.

We must state at the very outset that we have a sneaking sympathy for the appellants for their patience, fortitude and tenacity in pursuing a settlement for their complaint against their former employer. As unrepresented individuals, we well appreciate the difficulty that the appellants found themselves in.

The lower court premised its rejection of the appellants' application for leave to lodge complaint out of time on the provisions

of section 19(3) of the **Industrial and Labour Relations (Amendment) Act No. 8 of 2008**. That section provides as follows:

> **The court shall not consider a complaint or an application unless the complainant or applicant presents the complaint or application to the court –**
>
> **(a) Within ninety days of exhausting the administrative channels available to the complainant or applicant; or**
>
> **(b) Where there are no administrative channels available to the complaint or applicant, within ninety 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; and**
>
> **(ii) the court shall dispose of the matter within a period of one year from the day on which the complaint or application is presented to it.**

The evidence in the record of appeal disclose that seven years had gone by from the time the cause of action arose without the appellants commencing legal proceedings against their employer. They sought to exhaust administrative and political channels instead. The respondent in a letter dated 17th December, 2012 advised the appellants that the administrative procedures were

closed. Yet, the appellants only applied to file the complaint out of time on 9th January, 2015 – over three years later.

Any appellant, whether represented or not, has a duty to be vigilant. Law, like equity, favours the vigilant. Section 19(3) of the Industrial and Labour Relations (Amendment) Act has to be construed within the maxim *vigilantibus et non dormientbus jura subveniunt* (the law helps the vigilant, not those who slumber) – see paragraph 1437 **Halsbury's Laws of England, Vol. 44(1) 4th Ed. p.867.**

In **D. E. Nkhuwa v. Lusaka Tyre Services Ltd.**[1]we held that, the granting of an extension of time lies entirely in the discretion of the court but such discretion will not be exercised without good cause. We also stated in the same case that rules prescribing time limits within which steps must be taken ought to be adhered to strictly and parties who ignore them do so at their own peril.

Pursuing an *ex curia* settlement does not arrest the statutory time from running. In this case, the appellants could well have commenced their action in the Industrial Relations Court while they pursued a settlement on a clear understanding that such action

would be discontinued if and when a settlement were reached. Our view, therefore, is that the lower court cannot be faulted in finding as it did.

We started our judgment by stating that justice is blind. We meant by that expression that justice is applied impartially and objectively to all. It does not distinguish between friends and strangers; between the rich and the poor; the socially privileged and the socially disadvantaged; the employer and the employed. Thus, the law and rules regarding time limits apply across the board, regardless of the social or economic circumstances of the person involved.

The appellants have implored us to consider their peculiar situation and that reality has been harsh to them. All that is of no moment when measured against the blindness of justice as we have explained it.

We also stated that justice is not deaf. Its ears are wide open. It will listen to any person who comes to it with a view of persuading it. The appellants have had their day in court and their story has

We also stated that justice is not deaf. Its ears are wide open. It will listen to any person who comes to it with a view of persuading it. The appellants have had their day in court and their story has been listened to. It regrettably has not changed the position of the law no matter how much we, as agents of justice, may sympathise with the appellants. Arising from what we have stated, we are afraid that the appellants must lose and the appeal must be dismissed. We dismiss the appeal accordingly.

We make no order as to costs.

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I. C. Mambilima

CHIEF JUSTICE

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Dr. M. Malila SC

SUPREME COURT JUDGE

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M. C. Musonda SC

SUPREME COURT JUDGE