

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2014/HP/1560

BETWEEN:

DONALD NGWIRA

PLAINTIFF

AND

THE ATTORNEY GENERAL

DEFENDANT



***Before Hon. Mr. Justice Mathew L. Zulu, at Lusaka the 15th
day of May, 2018***

*For the Plaintiff: Mrs. M. Banda, Messrs. K.B.F and Partners.
For the Defendant: Ms. T. Nkunika, State Advocate in the Attorney
General's Chambers.*

RULING

Cases referred to:

- 1. Lackson Mwabi Mwanza v. Kangwa Simpasa and another (2005/HP/500).***
- 2. Lapemba Trading Ltd v. Pemba Lapidaries and Industries Credit Company – (SCZ/8/269/2013.) at page J12.***

Legislation referred to:

- 1. Order 39 Rule 2 of The High Court Rules, Chapter 27 of the Laws of Zambia.***

This is a ruling on the defendant's Notice of Intention to Raise Preliminary Issue pursuant to Order 14A Rule 2 of the Rules of the Supreme Court of England, 1965, the White Book.

The application is supported by an affidavit and skeleton arguments filed on 6th November, 2017. The affidavit is deposed by the Diana Majokwe Shamabobo, counsel seized with conduct of the matter on behalf of the defendant. Counsel avers that the judgment the plaintiff is requesting this court to review was delivered on 30th August, 2017 while the application for leave to review the Judgment was filed on 22nd September, 2017, over 14 days after the delivery of Judgment. She avers that the plaintiff ought to have firstly obtained special leave to review the Judgment. The defendant in its skeleton arguments consequently submits that the plaintiff's application for review is improperly before this court and that it ought to be dismissed. The case of **Lackson Mwabi Mwanza v. Kangwa**¹ was cited for persuasive purposes.

The defendant's preliminary issue was opposed by the plaintiff by way of an affidavit and skeleton argument filed on 16th November, 2017. The affidavit was deposed by Mulenga Banda, counsel seized

with conduct of the matter on behalf of the plaintiff. Counsel made several averments in the affidavit in opposition and also preferred several arguments in the skeleton arguments, which I will not delve into as they are not relevant to this ruling as will become evident in the course of this ruling.

When the matter came up for the hearing of the defendant's preliminary issue on 8th December, 2017, the defendant relied on the affidavit in support and the skeleton arguments. Counsel for the defendant also made brief oral arguments wherein she contended that the plaintiff ought to have firstly sought special leave to review the Judgment and only after obtaining special leave should he have proceeded to apply for review of the Judgment.

The plaintiff equally relied on his affidavit in opposition and the skeleton arguments. Counsel for the plaintiff in her oral arguments reiterated her arguments in the skeleton arguments and she submitted that this court should not dismiss the application for special leave to review judgment as the only irregularity was the omission of the words 'special leave' on the Summons.

I have considered the affidavit evidence before me, the skeleton arguments and the arguments by counsel. The question for determination is whether the plaintiff's application for leave to review the Judgment of this court dated 30th August, 2017 is properly before this court.

From the affidavit evidence, it is not in dispute that the application for leave to review the Judgment was made after 14 days had elapsed from the date the Judgment was delivered in this matter. The argument by the plaintiff is that though the Summons relating to the application for leave to review the Judgment does not explicitly state that it is for special leave to review the Judgment, the application is made pursuant to the correct law and the skeleton arguments show that the application is for special leave. The defendant on the other hand correctly contends that the plaintiff should have firstly applied for special leave to review the Judgment before applying for leave to review the Judgment. I have been guided by the case of **Lapemba Trading Ltd v. Pemba Lapidaries and Industries Credit Company**² where the Supreme Court outlined what the court must consider when determining an

application for special leave to review a judgment. The following was stated:

....it hardly bears mentioning that every application before court is grounded on specific requirements which must be established for the court to grant the relief sought.... In case of an application for special leave to review a judgment, a plausible reason for the delay ought to be adduced....

A court considering an application for special leave to review is not expected to grant every application as a matter of course. The purpose of rules insisting that those seeking special leave to review should do so through affidavits, is to ensure that the applicant furnishes to the court reasons for the failure to make the application to review within the time prescribed. It follows that such reason must be veritable, verifiable and should in any case offer reasonable account for the delay...

From the foregoing authority, I am of the considered view that when determining an application for special leave to review a judgment or order of the court, the court is not concerned with the reasons the applicant seeks to have a judgment or order of the court reviewed, but rather, with the reasons the application to review the judgment or order of the court was not made within 14 days from the date of the judgment. The application for special leave to review a judgment or order of the court constitutes the first hurdle or challenge an

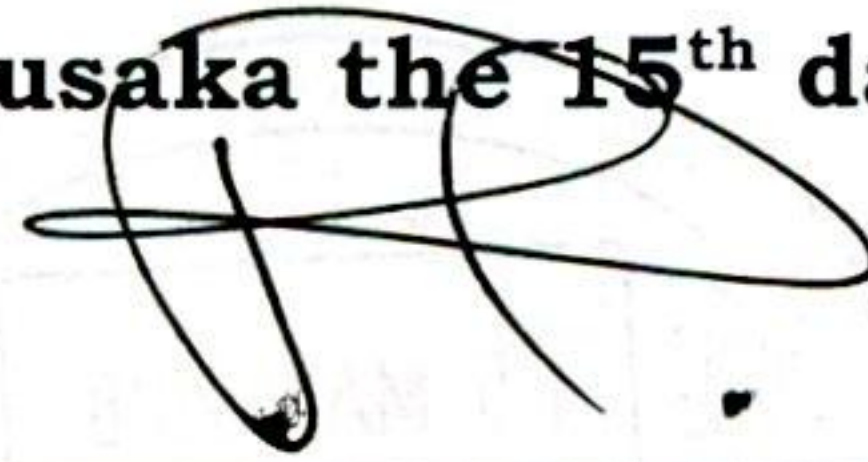
applicant seeking to have a judgment or order of the court reviewed after the expiry of 14 days from the date of the judgment must overcome. In the event that the court is satisfied with the reasons advanced for the delay, the next step is for the applicant to show that there is sufficient reason to warrant the court reviewing its judgment or order by way of an application for leave to review the judgment or order of the court.

A perusal of the affidavit in support of the plaintiff's application for leave to review the judgment and the skeleton arguments (even if as argued by the plaintiff the application was for all intents and purposes treated as special leave to review Judgment), shows that the plaintiff has not advanced any reasons for his failure to make the application to review the Judgment of this court within 14 days from the date thereof. The plaintiff has instead ventured into a discourse on why this court should review its Judgment, which reasons and arguments are only relevant during the hearing of the substantive application to review the Judgment and not at this stage of the proceedings.

In the light of the foregoing, I am disposed to find that the plaintiff has not provided any material upon which this court can consider the application for special leave to review the Judgment of this court dated 30th August, 2018 and I accordingly dismiss the application with costs to the defendant.

Leave to appeal is granted.

Delivered at Lusaka the 15th day of May 2018.



**MATHEW. L. ZULU
HIGH COURT JUDGE**