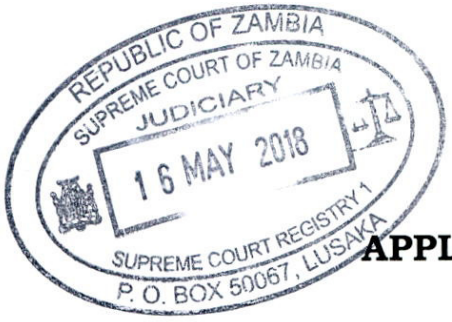
**IN THE SUPREME COURT OF ZAMBIA** **SCZ/8/300/2014**
**HOLDEN AT LUSAKA**
*(CIVIL JURISDICTION)*




BETWEEN:

**ZLATAN ZLATKO ARNAUTOVIC** **APPLICANT**

AND

**STANDARD BANK ZAMBIA PLC** **1ST RESPONDENT**

**STANBIC BANK (Z) LIMITED** **2ND RESPONDENT**

**Coram : Hamaundu, Mutuna and Chinyama, JJS.**
**On the 20th October, 2016 and 11th May, 2018**

For the Applicant : Mr. J. Madaika, Messrs J & M Advoates

For the 1st Respondent: Mr. K Mwondela, Messrs Lloyd Jones & Collins

For the 2nd Respondent: Mr S. Chisenga and Mr N. Siamoondo, Messrs Corpus Legal Practitioners

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# JUDGMENT

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

Cases referred to:
**Nahar Investment Limited v Grindlays Bank International(Zambia) Limited [1984] ZR 81**

The applicant in this motion seeks to set aside the decision of a single judge of this court by which the applicant's appeal was dismissed for want of prosecution. When we heard this motion, on 20th October, 2016, we dismissed it with costs to the respondents. We said that the reasons for our decision would be set out in the full text of the judgment. We now set out those reasons.

The facts leading to this motion are these:

The applicant, being dissatisfied with a ruling rendered by the High Court, appealed to the Supreme Court on 12th December, 2014. The record of appeal was due to be lodged on or about the 12th February, 2015. No record of appeal having been filed by that date, the 2nd respondent applied under **Rule 55** of the **Supreme Court Rules, Chapter 25** of the **Laws of Zambia** to dismiss the appeal for want of prosecution before a single judge of this court. At the hearing of that application, the applicant explained that he had failed to file his record of appeal in time because he had encountered difficulties in obtaining the typed record of proceedings. The single judge rejected that reason, saying that the applicant should have applied for

extension of time. She consequently dismissed the appeal for want of prosecution. The applicant, then, applied to the full bench to set aside that order.

Before us learned counsel for the applicant urged us to reverse the decision of the single judge, arguing that the applicant had exhibited eagerness to prosecute the appeal, and that he had even made an application for extension of time during the hearing of the 2nd respondent's application.

The respondents' argument was that the applicant had not exhibited the proposed record of appeal in the initial application. The respondents argued that, in the circumstances, there was no substratum of fact upon which the single judge could have exercised her discretion to grant the applicant an extension of time to file his record of appeal.

We considered the applicant's application and the arguments advanced by both sides. In **Nahar Investment Limited v Grindlays Bank International(Zambia) Limited**[1] we said:

> **"we wish to remind appellants that it is their duty to Lodge records of appeal within the period allowed, including any extended period. If difficulties are encountered which are beyond their means to control (such as the non-availability of the notes of proceedings which it is the responsibility of the High Court to furnish) appellants have a duty to make prompt application to the court for enlargement of time. Litigation must come to an end. It is highly undesirable that respondents should be kept in suspense because of dilatory conduct on the part of appellants. Indeed, as a general rule, appellants who sit back until there is an application to dismiss their appeal before making their own frantic application for an extension do so at their own peril."**

In this case, the learned single judge was of the view that, even though the delay was not inordinate, the reason given by the appellant for his failure to lodge the record of appeal, namely, that the typed proceedings were not available was not plausible. This is because, in the judge's view, that was the reason that should have prompted him to apply for extension. We agree with the learned single judge. This is so especially that the appellant did not file any application for extension of time. He merely informed the single judge at the hearing of the opponent's application that he had been contemplating filing an application for extension of time. It is for

these reasons that we dismissed the motion on 20th October, 2016, with costs to the respondents.

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E. M. Hamaundu

**SUPREME COURT JUDGE**

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N. K. Mutuna

**SUPREME COURT JUDGE**

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J. Chinyama

**SUPREME COURT JUDGE**