

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

APP. 74/2020

BETWEEN:

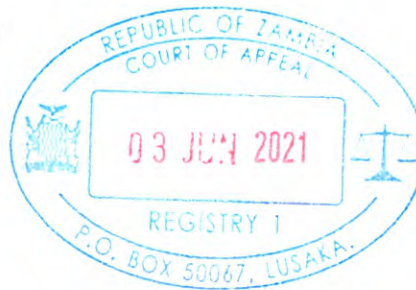
JASIEL PHIRI

AND

CELEBRATE JESUS BIBLE CHURCH INTERNATIONAL

APPLICANT

RESPONDENT



Coram: Mchenga, DJP, Ngulube and Siavwapa, JJA.

On 8th April 2021 and 3rd June 2021.

For the Applicant: B.Mulonda, Apton Banda & Company

For the respondent: No Appearance

RULING

Mchenga, DJP, delivered the ruling of the court.

Cases referred to;

1. Stanley Mwambazi v Morrester Farms Limited [1977] Z.R. 43
2. Zambia Revenue Authority v Jayesh Shah S.C.Z No. 10 of 2001
3. Henry M. Kapoko v The People [2016] 3 Z.R. 255

Legislation referred to;

1. The Constitution of Zambia, Chapter 1 of the Laws of Zambia
2. The Court of Appeal Act, No. 7 of 2016

3. The Court of Appeal Rules Statutory Instrument no. 65 of 2016

1. The applicant, has, pursuant to **Section 9B of the Court of Appeal Act** and **Order 7 Rule 1 (1) of the Court of Appeal Rules**, moved this court to reverse the order of a single judge of the court, dismissing this appeal for want of prosecution.
2. The background to the application is that the applicant, by writ of summons, commenced an action against the respondent in the High Court seeking a number of reliefs. A trial was conducted and at the end of it, judgment was delivered in favour of the respondent, on 29th November 2019.
3. Aggrieved with that decision, the applicant appealed to this court on 31st December 2019. As it turned out, he did not file the record of appeal and heads of argument, within the stipulated period of 60 days.
4. On 1st April 2020, the respondent applied to have the appeal dismissed for want of prosecution. The application was granted and the appeal was dismissed on 26th May 2020.

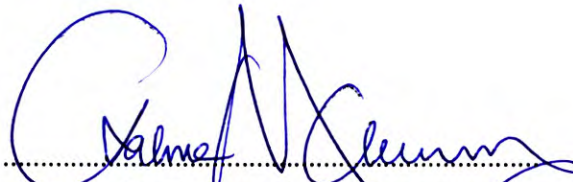
5. It was not until the 11th November 2020, that the applicant approached this court, through this motion, to set aside the order dismissing the appeal.
6. In the affidavit in support of the motion, it was deposed that the failure to meet the timelines was because counsel was preoccupied with preparing a record of proceedings and pursuing a stay of execution before the High Court.
7. It was further deposed that the delay in applying for the extension of time in which to file the record of appeal and heads of argument, was due to the fact that he was not working full time due to the corona pandemic.
8. In the skeleton arguments in support of the application, it was contended that having given reasons for their delay, it is in the interest of justice that their appeal is heard. Reference was made to cases including **Stanley Mwambazi v Morrester Farms Limited¹** and **Zambia Revenue Authority v Jayesh Shah²**, in which parties were allowed to file records of appeal even after their appeals had been dismissed for want of prosecution.


9. Our attention was also drawn to the provisions of **Article 118(2)(e) of the Constitution of Zambia** and we were urged to allow the appeal to be heard and determined on its merits.
10. First of all, in the case of **Henry M. Kapoko v The People**³, the Constitutional Court had the opportunity to make a pronouncement on the import of Article 118(2)(e) of the Constitution. They held, *inter Alia*, that **'Article 118(2)(e) is not intended to do away with existing principles, laws and procedures, even where the same constitute technicalities. It is intended to avoid a situation where a manifest injustice would be done by paying unjustifiable regard to a technicality.'**
11. Having considered the motion, the affidavit in support and skeleton arguments, we find that the reasons advanced by the applicant for not filing the record of appeal and heads of arguments within the stipulated 60 days, cannot warrant the setting aside the order dismissing the appeal.
12. Even though the applicant had the option to apply to extend the period within which to file the record of


appeal if he was not able to do so within 60 days, he did not make any such effort. It is only 9 months after the expiry of the 60 days that the applicant approached this court.

13. In the circumstances, we find that the applicant has been involved in dilatory conduct and the single judge was entitled to dismiss the appeal for want of prosecution. We find no basis for reversing her decision and dismiss the motion.

14. We make no order as to costs.


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C.F.R. Mchenga
DEPUTY JUDGE PRESIDENT


.....
P.C.M. Ngulube
COURT OF APPEAL JUDGE


.....
M.J. Siavwapa
COURT OF APPEAL JUDGE