

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

**CAZ/08/080/2021
App. No. SP/11/2021**

BETWEEN:

MOSES VERA

APPLICANT

AND

AFRICAN BANKING CORPORATION LIMITED

RESPONDENT

**Coram: Kondolo, Chishimba and Majula JJAs
On the 27th July, 2021 and 7th October, 2021**

For the Applicant : Ms. M. Kapapula & Mr. R. Musumaile of
Messrs. SLM Legal Practitioners

For the Respondent : Mrs. M. Chakoleka & C. Katele of Messrs.
Nchito & Nchito

R U L I N G

CHISHIMBA, JA, delivered the ruling of the Court.

CASE AUTHORITIES CITED:

1. Paolo Marandola & Others v Gianpietro Milanese & Others SCZ Judgment No. 6/2014 (Appeal No. 130/2008)
2. Antonio Ventriglia & Another v Finsbury Investments Limited SCZ Appeal No. 2/2019

LEGISLATION REFERRED TO:

1. The Court of Appeal Rules Statutory Instrument No. 65 of 2016.

2. The Interpretation and General Provisions Act Chapter 2 of the Laws of Zambia

On 7th April, 2021, the applicant filed an amended motion for extension of time to file the application for leave to appeal to the Supreme Court of Zambia pursuant to **section 13(1) of the Court of Appeal Act No. 7 of 2016** (herein after referred to as 'the CAR'). The motion was subsequently amended on 5th May, 2021. Before the motion could be heard, the respondent filed a notice of preliminary objection to the motion for extension of time to file motion for leave to appeal, made pursuant to **Order 13 Rule 5 of the CAR, 2016** dated 15th June, 2021. The application was based on the following grounds:

- 1) That the judgment of this Honourable court having been delivered on 26th February, 2020, the applicant's motion for leave to appeal to the Supreme Court should have been filed fourteen (14) days thereafter which is on or before 11th March, 2020;*
- 2) That the applicant did not file the motion within the time prescribed by section 13(2) of the Court of Appeal Act, 2016; and*
- 3) This Honourable court has no jurisdiction to extend time that is prescribed in section 13(2) of the Court of Appeal Act, 2016 and as such, this motion is incompetent and this court cannot entertain it.*

The respondent filed skeleton arguments in support of the notice of preliminary objection in which it referred to **section 13(2) of the Act** and submitted that this court has no jurisdiction to hear an application for leave to appeal filed outside the fourteen day period, neither does the court have any power to extend the time period.

In reference to the case of **Paolo Marandola & Others v Gianpietro Milanese & Others** ⁽¹⁾, it was submitted that the time frame of 14 days provided for in the Act, is substantive law, and that the said provision does not provide for an extension of time for any reason. Therefore, **Order 13 Rule 3 of the CAR** being relied upon to extend the time, is limited to extension of time lines in the **CAR** and generally to appeals that come before it from the High Court and quasi-judicial bodies. It cannot extend to the main body of the Act which contains substantive law.

The respondent contends that the court has no jurisdiction to hear an application to extend the time for filing a motion for leave to appeal to the Supreme Court.

We were further referred to the case of **Antonio Ventriglia & Another v Finsbury Investments Limited** ⁽²⁾ where the court guided that leave to appeal granted by the Court of Appeal can only be valid and legally recognizable if the relevant application is launched within 14 days of the pronouncement of the judgment, and that grievances that birth the desire to appeal that arise after the expiry of the 14 day period following the amendment or modification of a judgment.

Therefore, it is of no consequence that the applicant only became aware of the judgment after expiration of the 14 day period. As long as the motion for leave to appeal has not been filed within 14 days of the judgment, this court has no jurisdiction to hear it nor is it clothed with any power to extend the time given in the substantive law. It was prayed that motion for extension of time to file an application for leave to appeal to the Supreme Court be dismissed with costs for want of jurisdiction.

On 23rd June, 2021, the applicant filed skeleton arguments in opposition to the preliminary objection. It was submitted that the objection lacks merit because it is trite that any time that has been prescribed by an Act of Parliament can be extended by the court, including the 14 days prescribed in section 13(2) of the Act.

The court has been clothed with statutory discretion to extend time for doing anything or taking any steps as per **section 37 of the Interpretation and General Provisions Act Chapter 2 of the Laws of Zambia** which reads as follows:

37. Where in any written law a time is prescribed for doing any act or taking any proceeding and power is given to a court or other authority to extend such time, then, unless a contrary intention appears, such power may be exercised by the court or other authority although the application for the same is not made until after the expiration of the time prescribed.

The applicant submitted that this provision applies even in respect of time prescribed in the Court of Appeal Act including the provisions of section 13(2). Therefore, notwithstanding the 14 days prescribed period, an application for leave to appeal can be extended by this court. Further that it was not the intention of the legislature to make the 14 days' period inextensible.

It was further argued that the Act, subject to the rules of court, does envisage that time prescribed in the Act can be extended by the court as per **section 30 of the Act** which empowers the Chief Justice to make, by statutory instrument, rules for regulating the general practice and procedure of the court.

In pursuance of **section 30 of the Act**, the CAR were promulgated, which in **Order 13 Rule 2**, allow for extension of time including an application for leave to appeal to the Supreme Court. Contrary to the respondent's argument, the applicant submitted that **Order 13 Rule 3(3)** applies to the main body of the Act because the main Act, in section 30, expressly authorizes the Chief Justice to make rules of procedure. Further, **Order 13 Rule 3(3) of the CAR** expressly mentions that ***"The Court may for sufficient reason extend time for making an application, including an application for leave to appeal, or for bringing an appeal, ..."***

In conclusion, the applicant submitted that in this respect, the Supreme Court decisions in **Paolo Marandola & Others v Gianpietro Milanese & Others** ⁽¹⁾ and **Antonio Ventriglia & Another v Finsbury Investments Limited** ⁽²⁾ cited by the respondent, are clearly distinguishable with this case. There is an express and clear nexus in *casu* to the provisions of the CAR and the Act which allow for an application for extension of time to file an application for leave to appeal.

The applicant prayed that the preliminary objection be set aside and that the court proceeds to hear the motion.

We have considered the preliminary objection raised, the opposing views and the arguments advanced by counsel for the respective parties. As well as the authorities cited by learned Counsel. It is not in issue that we delivered a judgment on 20th February 2020 against the appellant Moses Vera. Leave to appeal to the Supreme Court ought to have been filed within 14 days by the appellant by 5th March 2020. Leave to file an application for leave to appeal to the Supreme Court was granted on 29th June 2020 and reviewed on 27th July 2020. The appellant failed to file the motion for leave to appeal out of time.

They then sought a 3rd extension of time application for an order for leave to file notice of motion for leave to appeal to the supreme court out of time before a single judge. The single judge dismissed the application. Hence the amended motion to the full court to reverse the single judge's decision and obtain leave to file out of time the application to appeal to the Supreme Court. The respondent objected and raised issues to the amended motion for an order of extension.

The contention of the respondent is that this court is not clothed with the jurisdiction to extend the time, prescribed in **section 13(2)**

of the Court of Appeal Act, within which a party can seek leave to appeal to the Supreme Court for the reason that **Order 13 Rule 3 of the CAR** is limited to extension of time lines within the CAR. The respondent, is further of the view that **Order 13 Rule 3**, in general, deals with appeals that come to the court from the High Court and quasi-judicial bodies. Therefore, **Order 13 Rule 3** cannot extend to the main body of the Act which contains substantive law.

It is common cause that the judgment of this court sought to be appealed was delivered on 26th February, 2020 while the applicant only approached the court seeking to appeal on 31st July, 2020 being well over the stipulated 14 day period.

The issue raised is one of jurisdiction. Whether the court of appeal has jurisdiction to extend the time within which a motion for leave to appeal to the Supreme Court can be made. The respondent has cited the case of **Antonio Ventriglia & Another v Finsbury Investments Limited** a Supreme Court decision. The facts being that we delivered a judgment, following embodiment of judgment pursuant to ruling dated 29th March 2019, the appellants took out two motions. The relevant one being the motion for leave to appeal against the Court of Appeal Judgment of 31st January 2019 as settled

in the order of 29th March 2019. The respondent filed an objection to the leave sought on basis that it had been made outside the 14 days period stipulated by **Section 13 (2) of the Court of Appeal Act** and that court lacked jurisdiction to entertain the same. That the period started to run from date of main judgment and not from the date of the embodiment order. The court of appeal dismissed the respondents motion to dismiss the appellant's application for leave to appeal to the Supreme Court against judgment of 31st January 2019 that time began to run from 29th March 2019 instead of 31st January 2019. The Court of appeal proceeded to grant leave to appeal.

Before the listed appeal could be heard by the Supreme Court, the respondent filed a P. I before the Supreme Court on the basis that the Court had no jurisdiction to hear and determine the appeal against the judgment of Court of Appeal dated 31st January 2019 because leave was granted outside 14 days.

The Supreme Court heard and determined the preliminary objection and held that;

“The applicable period of reckoning of the time within which the respondents ought to have launched their appeal to it was 14 days

from date of the judgment of Court of Appeal and not when the judgment in question was changed (embodied) on 29th March 2019.”

The Supreme Court considered the question whether having regards to the fact that the respondents had purported to apply for leave at a time when the applicable period within which they could have lawfully done so had long expired “*could the outcome of that purported application possibly stand.*” They answered unequivocally that the purported decision however one could choose to package it cannot stand. That by the Court of Appeal hearing the application for leave in the circumstances highlighted above, amounted to nothing.

Therefore the Supreme Court had no jurisdiction to entertain the appeal in light of the flawed circumstances which characterized its launching before this court.

We have extensively quoted the circumstances of what transpired in the Antonio Ventriglia appeal in order to distinguish it from the facts in *casu*. It is not in dispute an appeal from a judgment of the Court of Appeal to the Supreme Court under Section 13 subsections (1) and (2) of the Court of Appeal Act must be lodged with

leave of court by way of an application made within 14 days of the judgment.

In *Casu*, judgment subject of appeal was delivered on 20th February 2020. The appellant did not file a motion for leave to appeal within the requisite 14 days. After the lapse of 14 days, it made an application for leave to file out of time the motion for leave to appeal to the Supreme Court.

In our view, the Court of Appeal has jurisdiction to extend the time pursuant to Order 13 Rule (3) of the Court of Appeal for sufficient reason for making an application including an application for leave to appeal or taking any step in or in connection with an appeal. Contrary to the respondent's contention, this is not limited to appeals coming from the High Court and quasi-judicial bodies but is applicable in respect of applications relating to leave to appeal to the Supreme Court and extensions of time connected thereto.

For the foregoing reasons, we accordingly dismiss the preliminary objection raised by the respondent. We further direct that the pending motion for an order for extension of time to file the application for leave to appeal to the Supreme Court of Zambia will

- be heard and determined on the 12th of October 2021 at 09:30 hours.
- Costs to the appellant to be taxed in default of agreement.


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M. M. Kondolo SC

COURT OF APPEAL JUDGE


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F. M. Chishimba

COURT OF APPEAL JUDGE


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B. M. Majula

COURT OF APPEAL JUDGE