

**IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)**

**SCZ/8/02/2022**

**BETWEEN:**

**ELIAS TEMBO**

**AND**

**MAUREEN CHIRWA**

**DUNCAN CHIRWA**

**ATTORNEY GENERAL**

**LUSAKA CITY COUNCIL**

**PEGGY KANDESHA**



**APPLICANT**

**1<sup>ST</sup> RESPONDENT**

**2<sup>ND</sup> RESPONDENT**

**3<sup>RD</sup> RESPONDENT**

**4<sup>TH</sup> RESPONDENT**

**5<sup>TH</sup> RESPONDENT**

**Coram : Chinyama, JS, in Chambers on 3<sup>rd</sup> January, 2022,  
10<sup>th</sup> February, 2022 and 23<sup>rd</sup> March, 2022.**

For the Applicant : Mr. F. Mutale, F. M. Legal Practitioners.

For the 1<sup>st</sup> and 2<sup>nd</sup> Respondents : Mr. Anthony Mwila with Mr. Chawezi Ngoma, Kaunda Kaunda Legal Practitioners.

For the 3<sup>rd</sup> Respondent : Mrs. D. Mwewa Sallah, Principal State Advocate, Attorney General.

For the 4<sup>th</sup> Respondent : Absent

For the 5<sup>th</sup> Respondent : Absent

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**R U L I N G**

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**Cases referred to:**

1. **D. E. Nkhuwa v Lusaka Tyre Services Limited (1977) ZR 43.**
2. **Twampane Mining Co-operative Society Limited v Storti Mining Limited, S.C.Z. Judgment No. 20 of 2011.**

**Statutes referred to:**

1. **Supreme Court Rules, Chapter 25, Rules 12(1)(2), 48(1).**
2. **Statutory Instrument No. 26 of 2012, Section 6(a).**

1. This is an application filed on 12<sup>th</sup> January, 2022 for leave to file renewed application for leave to appeal to the Supreme Court out of time pursuant to Rule 12, Supreme Court Rules (SCR), Chapter 25, Laws of Zambia. The application is supported by an affidavit, written arguments as well as affidavits in reply to the 1<sup>st</sup> and 2<sup>nd</sup> respondents as well as the 3<sup>rd</sup> respondents' affidavits in opposition.
2. The application is opposed, as it were, jointly by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and singly by the 3<sup>rd</sup> respondents who filed affidavits in opposition as well as written arguments. The 4<sup>th</sup> and 5<sup>th</sup> respondents did not file anything in opposition.
3. The substance of the applicants' application is that he desires to appeal against a judgment of the Court of Appeal delivered on 29<sup>th</sup> March, 2021. He had applied for leave to appeal in the Court of Appeal which Court delivered its

ruling refusing his application. He was, however, unaware of the delivery of the ruling until 9<sup>th</sup> December, 2021 when a copy of the ruling dated 18<sup>th</sup> November, 2021 was handed to him by a court official (a marshal to Justice Siavwapa of the Court of Appeal) while he was at the Court Registry where he had gone for other business. By the date of the ruling, he was out of the time within which he could renew the application for leave before the Supreme Court in terms of Rule 48(1), SCR.

4. The applicant explained that his advocate, Mr. Remmy Mainza of Mainza and Co. had passed on earlier in the year; that he collected his file from the administrator appointed by the Law Association of Zambia to wind up the affairs of the law firm; that he had, in the meantime, not appointed any other advocate. As I understood the applicant, the lawyer could have known about the delivery of the ruling had he been available.
5. The main ground of opposing the application by the 1<sup>st</sup> and 2<sup>nd</sup> respondents is that the applicant has not demonstrated that the intended grounds of appeal raise a novel point of

law of public importance and that the said grounds have reasonable prospects of success.

6. For the 3<sup>rd</sup> respondent, the opposition is largely on the point that following the demise of the advocate, the applicant should have been prudent enough to follow up the matter; that there is no proof that the applicant only became aware of the ruling more than 14 days after delivery. It was contended that the delay is inordinate as the ruling was delivered on 18<sup>th</sup> November, 2021.
7. There was nothing, as indicated, from the 4<sup>th</sup> and 5<sup>th</sup> respondents.
8. I have considered the application before me. Rule 12(1) SCR, gives power to the court, for sufficient reason given by the applicant to grant extension of time. In terms of Rule 12 (2) SCR, however, the application must be made within 21 days from the time when the period allowed within which the application should have been made expired. For context the rules state-

**12. (1) The Court shall have power for sufficient reason to extend time for making any application, including an application for leave to appeal, or for bringing any appeal, or**

for taking any step in or in connection with any appeal, notwithstanding that the time limited therefor may have expired, and whether the time limited for such purpose was so limited by the order of the Court or by these Rules, or by any written law.

(2) An application to the Court for an extension of time in relation to a judgment or the date of expiration of the time within which the application ought to have been made shall be filed at the registry within twenty-one days of the judgment or such time within which the application ought to have been made unless leave of the Court is obtained to file the application out of time;

(3) ...

9. Rule 12(2) above, was brought in as an amendment and, in my understanding, a qualification to Rule 12(1) (see **Statutory Instrument No. 26 of 2012, section 6(a)**), to provide a time frame within which the stated applications must be filed. Left alone, sub-rule (1) was obviously problematic as it allowed indolent parties to take advantage of its permissive provisions. This led the Court to craft restrictive principles to guide when an application for extension of time can be granted (see cases such as **D. E. Nkhuwa v Lusaka Tyre Services Limited**<sup>1</sup> and **Twampane Mining Co-operative Society Limited v Storti Mining Limited**<sup>2</sup>). With the coming of the

amendment in sub-rule (2), applicants must be diligent to ensure that applications for extension of time are brought within the time allowed.

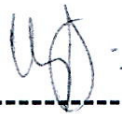
10. In the case before me, the ruling by the Court of Appeal is dated 18<sup>th</sup> November, 2021. This means that the applicant had, in terms of Rule 48(1) SCR, which provides for the renewal of applications in the Supreme Court for leave to appeal, up to 1<sup>st</sup> December, 2021 to file the application for leave to appeal in regular time. The applicant has averred that he was not aware of the delivery of the ruling until 9<sup>th</sup> December, 2021 when he was handed a copy of the ruling. If I accept the explanation, it would mean that the applicant had up to 23<sup>rd</sup> December, 2021 to file the application for leave to appeal.
11. The 3<sup>rd</sup> respondent has, however, protested that I should not take account of the explanation that the appellant became aware of the ruling when he was handed a copy by a court official while on other business at the court. That there is no proof that this was so and that the applicant should have been prudent enough to be following up the

matter after the demise of his advocate since he had collected the file.

12. I think that the explanation given by the applicant is reasonable given the circumstances. He gave a clear explanation of how he came to learn about the ruling and literally identified the court official who attended to him. The 3<sup>rd</sup> appellant's argument is simply that this does not amount to proof but did not seek out the stated official, who could have sworn an affidavit in response to the allegation, to disprove it. I, accordingly, accept that the applicant was not aware of the delivery of the ruling until it was handed to him by a court official on 9<sup>th</sup> December, 2021.
13. The result of the foregoing and in the light of Rule 12 (2) SCR, is that the applicant had 14 days within which to file the application for leave to appeal in regular time, that is to say by the 23<sup>rd</sup> December, 2021. He did not file the application by that date and fell out of time. At that point, the 21 days within which to file an application for extension of time began to run and was due to expire on

13<sup>th</sup> January, 2021. The applicant, however, filed the application, a day before, the expiry of time, on 12<sup>th</sup> January, 2022. The application is, therefore, within the time allowed and I grant it.

14. As for the prospects of the appeal, I believe that these will be considered in the application for leave to appeal out of time. I grant the applicant seven days from the date of service of this ruling upon him in which to file the application to appeal out of time.



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**J. CHINYAMA**  
**SUPREME COURT JUDGE**