

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

**App. No. 80/2023
App. No. 005/2024**



BETWEEN:

BANK OF ZAMBIA

1ST APPELLANT

THE ATTORNEY GENERAL

2ND APPELLANT

AND

AL SHAMS BUILDING MATERIALS

1ST RESPONDENT

COMPANY LIMITED

JAYESH SHAH

2ND RESPONDENT

CORAM: Mchenga DJP, Chishimba and Ngulube, JJA

On 7th June, 2024 and 6th August, 2024

For the 1st Appellant: Ms. M. Mukuka & Mr. T. Kasweshi of
Messrs. Ellis & Co.

For the 2nd Appellant: Mrs. C. Mulenga, Acting Chief State
Advocate - Attorney General's Chambers
Mrs. Chisanga of Messrs. C. L. Kasonde

For the 1st Respondent: Mr. A. Kasolo & Mr. W. Simutenda of
Messrs. TME Advocates
Mr. E. Chinyama of Messrs. Mwamba &
Milan Advocates.

For the 2nd Respondent: Mrs. S. Phiri Hinji & Mrs. G. Mufumbi of
Messrs. Chifumu Banda & Associates

R U L I N G

CHISHIMBA, JA, delivered the ruling of the Court.

CASES REFERRED TO:

1. Rosemary Nyangu v Pamodzi Hotel Plc SCZ/08/08/2021



2. Standard Chartered Bank PLC v Wisdom Chanda & Christopher Chanda SCZ Judgment No. No. 18 of 2014
3. Leopold Walford (Z) Limited v Unifreight (1985) ZR 203
4. Zambia Revenue Authority v Jayesh Shah SCZ Judgment No. 10 of 2001
5. Zambia Telecommunications Company Limited v Muyawa Liuwa SCZ Judgment No. 16 of 2002
6. Mega Earth Movers Limited v Rapid Global Freight Limited CAZ/08/223/2019
7. Twampane Mining Co-Operative Society Limited v E & M Storti Mining Limited (2011) 3 ZR 67
8. Nahar Investment Limited v Grindlays Bank International (Zambia) Limited (1984) Z.R. 81
9. Eastern and Southern African Trade and Development Bank V Antonio Ventriglia and Others Appeal No. 12 of 2024
10. Benayah Nonde v Bornface Nande CAZ Application No. 24 of 2023
11. Environmental Investigation Inc and 2 Others V Given Lubinda Others

LEGISLATION REFERRED TO:

1. The Court of Appeal Act, No.7 of 2016
2. The Court of Appeal Rules Statutory Instrument No. 65 of 2016
3. The Rules of the Supreme Court of England, 1999 Edition

1.0 INTRODUCTION

1.1 This is the 2nd respondent's motion to reverse and discharge the decision of the single Judge, made pursuant to **section 9(b) of the Court of Appeal Act No. 7 of 2016 (the CAA)** as read with **Order 10 rule 2(b) of the Court Appeal Rules, 2016 (the CAR).**

1.2 The motion is based on the grounds that:

- 1) *The Single Judge did not have the jurisdiction in CAZ/08/445/2022 to hear and determine any other application apart from the application to dismiss the 2nd appellant's appeal for want of prosecution;*
- 2) *The Single Judge ought to have dismissed the 2nd appellant's appeal under CAZ/08/445/2022 for want of jurisdiction, and/or want of prosecution and/or multiplicity of actions;*

- 3) *The appeal filed by the 2nd appellant under CAZ/08/445/2022 did not comply with the rules of court and should be dismissed, and/or;*
- 4) *The Single Judge was bound by the doctrine of stare decisis therefore the 2nd appellant's appeal under CAZ/08/445/2022 should be dismissed for want of prosecution;*
- 5) *The Single Judge did not pronounce himself on whether the court had jurisdiction in CAZ/08/445/2022 when the issue of jurisdiction was raised before him; and*
- 6) *The Single Judge did not pronounce himself on whether consolidation is permissible where the Attorney General has already argued as 3rd respondent in CAZ/08/430/2022 and simultaneously seeks to appear as 2nd appellant under CAZ/08/445/2022.*

2.0 AFFIDAVITS BY THE PARTIES

2.1 The motion is supported by an affidavit filed by Jayesh Shah, the 2nd respondent. The deponent states that there are two appeals under CAZ/08/430/2022 and CAZ/08/445/2022 which arise from judgment of the High Court in Cause No. 2020/HPC/0565 dated 29th September, 2022. In both appeals, the parties, facts and grounds of appeal of the 1st and 2nd appellants are the same. The only difference is that CAZ/08/430/2022 was filed on 11th October, 2022 by the 1st appellant with the Attorney General as 3rd respondent, while CAZ/08/445/2022 was filed on 17th October, 2022 by the Attorney General, who is also the 2nd appellant therein.

2.2 The deponent states that the 2nd appellant was neither a party in the High Court proceedings nor appeared or filed any submissions.

The Court made no findings against the 2nd appellant. Further, that without meeting the condition for the grant of leave to appeal, nor appealing against the conditional leave, the 1st appellant proceeded to lodge its appeal under CAZ/08/430/2022 on 11th October, 2022 followed by the 2nd appellant under CAZ/08/445/2022 on 17th October, 2022. In addition, that the grounds of appeal in both appeals are *verbatim et literum*.

2.3 The 60-day time frame within which the 2nd appellant ought to have lodged the record of appeal, heads of arguments, and paid the prescribed fees and security for costs, expired on 16th December, 2022. The 2nd appellant did not apply for an order for extension of time. Counsel for the 2nd appellant had informed Mr. Shah on 30th December 2022, that they did not have paper to photocopy the bulky record.

2.4 Mr. Mukwasa, Counsel for the 2nd appellant was only certified medically unfit for work from 23rd to 30th January, 2023. That there is no evidence of Mr. Mukwasa being unwell between 16th December, 2022 and 7th January, 2023, the period when

the 60-day period within which to file the record of appeal and arguments expired. As at 9th June, 2023, 235 days had elapsed without the 2nd appellant filing the record of appeal and heads of arguments.

2.5 Arising from the above, the 1st respondent applied to dismiss the 2nd appellant's appeal in CAZ/08/445/2022 for failure to comply with the rules of court. Thereafter, the 2nd appellant applied to consolidate the appeal in CAZ/08/430/2022 with CAZ/08/445/2022.

2.6 The 1st appellant did not file an affidavit in opposition to the 2nd respondent's motion. Instead, the 1st appellant filed a notice of motion to raise preliminary issues to the 2nd respondent's motion dated 19th December, 2023 on the grounds that the 2nd respondent's motion is styled as an appeal from the decision of the single judge and constitutes an abuse of court process. We shall treat the said motion as the 1st appellant's opposition to the 2nd respondent's motion.

2.7 An affidavit in opposition was filed by Bonaventure Chibamba Mutale, (SC) of Ellis and Company, advocates for the 1st appellant. State Counsel deposed that following the ruling of the single judge dismissing the 1st respondent's application

and consolidating the two matters in *casu* into one appeal, the 2nd respondent filed a motion to reverse and discharge the decision of the single judge of this Court. That the said motion by the 2nd respondent is not a renewed application before the full bench but is in substance, an appeal.

2.8 The learned State Counsel, states that paragraphs 8 – 12, and 16 -18 of the 2nd respondent's affidavit in support of the notice of motion, as well as paragraphs 1, 2, 5.1, 10.1, b (1) and c (2) of his skeleton arguments, take issue with the 2nd appellant's failure to comply with the High Court's order of conditional leave to appeal. The status of an appeal from the High Court judgment in light of the order of conditional leave to appeal was already the subject of the 1st respondent's notices of preliminary objection/issue on a point of law raised on 20th December, 2022 and the motion of 25th January, 2023.

2.9 The question relating to conditional leave to appeal has been disposed of by a ruling of the full court delivered on 15th January, 2024. In the premises, the 2nd respondent's motion constitutes forum shopping, an attempt to rehash an issue that has already been heard and abuse of court process.

2.10 The 2nd appellant, the Attorney General, supported the position taken by the 1st appellant in total by adopting its submissions.

2.11 The 1st respondent filed a notice of motion dated 6th February, 2024 challenging the 1st appellant's motion which we have treated as an opposition. In that regard, we shall treat the 1st respondent's motion challenging the 1st appellant's motion as the 1st respondent's reply.

2.12 In reply, Milan Dipakkumar Desai, a partner in the firm of Mwamba and Milan Advocates, co-advocates for the 1st respondent, deposed that the 2nd respondent's motion was initially set for hearing on 30th January, 2024 but was adjourned at the instance of the Court. The firm subsequently had sight of skeleton arguments in support of the said motion, bearing a date corrected in pen, as 19th January, 2024.

2.13 On 31st January, 2024, Ellis & Company served on Mwamba and Milan Advocates a photocopy of the notice of motion which was initially dated 19th December, 2023 but now bearing a date stamp for 19th January, 2024. These were exhibited collectively as **"MDD3"**. The firm has not been served with any order of Court granting leave to the 1st

appellant to amend the aforesaid notice of motion, or its supporting affidavit.

2.14 Susan Phiri, an advocate with Chifumu Banda & Associates, advocates for the 2nd respondent, filed an affidavit in opposition to the 1st appellant's motion. We shall treat this as a reply to the 1st appellant's affidavit in opposition.

2.15 Ms. Phiri deposed that she is taken aback by State Counsel's position suggesting that the 2nd respondent's motion to reverse and discharge the decision of the single judge ought to have been a renewal. That an application to vary, reverse or discharge a decision of a single judge not involving a stay of execution, interim injunction or leave to appeal cannot be made as a renewal but as a new or fresh application that takes issue with the decision of the single judge made before the full bench or court.

2.16 As such, the 2nd respondent's application could not be brought to the full bench by way of renewal but as a fresh application altogether, that takes issue with the single judge's decision to be heard and determined by the full court. The application was made by the 2nd respondent in person, who is a layperson, in accordance with Form III set out in the First Schedule of the rules of court. That it is imperative and in the

interest of justice that the application be heard and determined on its substance and merit as the irregularity, if any, is not fatal.

3.0 SKELETON ARGUMENTS BY THE PARTIES

- 3.1 The 2nd respondent filed skeleton arguments in support of the notice of motion to reverse and discharge the decision of the single Judge. He submits that the 2nd appellant has not complied with the Order of the Court below to pay 30% of the judgment sum as a precondition to the grant of leave to appeal. In addition, it was submitted that the 2nd appellant is in breach of the mandatory provisions of **Order 10 rule 6 of the CAR** and that no application for extension of time has been made pursuant to **Order 13 rule 3 of the CAR**.
- 3.2 In spite of the failures to comply with the rules of Court, the 2nd appellant proceeded to apply for consolidation of the two appeals. It was contended that the single judge had referred the issue of the failure to pay the 30% of the judgment sum into Court and whether the court had jurisdiction in CAZ/08/430/2022 to the full court. The full court has since heard the matter and the ruling therein is still pending.
- 3.3 The rest of the 2nd respondent's arguments challenged the decisions made by the single judge in the ruling sought to be

reversed and discharged.

3.4 Arguments in opposition were filed on behalf of the 1st appellant. Counsel argued that the 2nd respondent's motion ought not to be entertained by this court for two reasons namely:

- 1) That the application is not a renewed application, but a motion styled as an appeal; and
- 2) That the application is an attempt at rehearing the 1st respondent's preliminary objection to the appeal, which objection was dismissed by the ruling delivered on 15th January, 2024.
- 3) That the application is an attempt at rehearing the 1st respondent's preliminary objection to the appeal, which objection was dismissed by the ruling delivered on 15th January, 2024.

3.5 Learned Counsel submitted that there is ample authority to the effect that the power exercisable by the full court at the instance of a party aggrieved by the decision of a single judge can only be exercised on a renewed application, and an application styled as an appeal must be dismissed. Ms. Mukuka cited the case of **Rosemary Nyangu v Pamodzi Hotel Plc** ⁽¹⁾ where the Supreme Court guided that an

application or motion from a single judge to the full Court, comes by way of renewal and ought to be presented as such.

3.6 Learned Counsel further contended that neither **section 9(b) of the CAA** nor **Order 10 rule 2(8) of the CAR** relied upon by the 2nd respondent, grants a party aggrieved by the decision of a single judge a right to appeal to the full court.

The gist of the argument is that the motion is in fact couched as an appeal, and not as a renewal. This can be seen from the features of the cover of the motion, index to the motion, affidavit in support, the grounds in support of the motion and paragraphs 7 – 9, 11 and 12(c)(1) – (9) and (17) – (21) of the skeleton arguments which are centered on what the single judge could and could not do.

3.7 It was further argued that the 2nd respondent's notice of motion is an abuse of court process as it is being used as a mechanism to re-litigate the question of whether the appeal is liable to be dismissed for failure to comply with the High Court's Order for conditional leave to appeal.

3.8 The 1st respondent contended that the issue of conditional leave was not among the grounds put forward in the application to dismiss the 2nd appellant's appeal. Secondly,

the 1st respondent had already raised and argued a preliminary issue on that basis at the hearing and that the issue was disposed of by a ruling delivered on 15th January, 2024. We were urged to dismiss the 2nd respondent's motion on points of law with costs to be borne by the 2nd respondent.

3.9 In reply, the 1st respondent submitted that in a covering letter enclosing the purportedly "corrected" BOZ motion, counsel for the 1st appellant stated that the motion was erroneously stamped 19th December, 2023 when it was in fact filed on 19th January, 2024. That the Court of Appeal Registry Official, who had processed the motion was approached, and that the error had since been corrected as per the copy of the notice of motion that had been enclosed with the letter.

3.10 Counsel for the 1st respondent maintained that they had not had sight of any order of Court granting leave to the 1st appellant to amend the BOZ Motion in question. As such, any amendments that occurred after the service of the motion have occurred unilaterally and without leave of court. Reliance was placed on **Order 8 rule 1 of the CAR**.

3.11 There having been no leave of Court sought to effect the amendment, it is rendered incurably bad and liable to be set

aside for irregularity. In the absence of leave, this Court has no jurisdiction to hear and determine the BOZ Motion.

Counsel cited **Order 2 rule 2 of the Rules of the Supreme Court of England, 1999 Edition** urging us to set aside the BOZ Motion on the basis that it has been 'amended' or rectified without leave of Court.

3.12 Counsel also cited the case of **Standard Chartered Bank PLC v Wisdom Chanda & Christopher Chanda** ⁽²⁾ and submitted that any reason, no matter how well articulated cannot of its own cure a defect. The party concerned must take out an appropriate application to cure a defect, and that the court has no mandate to choose to ignore the defect by proceeding as if it never existed.

3.13 We were urged to set aside the BOZ Motion in its entirety for irregularity, with costs.

3.14 Learned Counsel for the 2nd respondent filed skeleton arguments in reply and argued that the ruling that he takes issue with and seeks to have reversed and discharged, does not involve issues of leave to appeal, stay of execution or an order of interim injunction which are required to be brought before the full court by way of renewal. That the **Rosemary Nyangu case** relied upon by the appellants is distinguishable

from this case as the motion in that case bordered on leave to appeal which ought to have been a renewal.

3.15 Counsel submitted that **Order 8 rule 1(1) of the CAR** provides for the manner in which interlocutory applications, such as the one made by the 2nd respondent, should be made, that is, by way of notice of motion or summons in Form III and Form IV respectively set out in the First Schedule of the CAR. The 2nd respondent, a layperson, ably filed the motion in Form III. It is therefore appalling and somewhat difficult to comprehend the issues the appellants have with the 2nd respondent's notice of motion.

3.16 With respect to ground two, it was contended that a perusal of the 2nd respondent's notice of motion shows that it centers around the question of whether the appeal is liable to be dismissed for failure to comply with the High Court's Order for conditional leave. That if this is an irregularity, it is not fatal but curable as the said paragraphs, if found irregular or defective, can be expunged from the record. Counsel relied on the case of **Leopold Walford (Z) Limited v Unifreight** ⁽³⁾ which held that:

“As a general rule, breach of a regulatory rule is curable and not fatal depending on the nature of the breach and stage reached in the proceedings.”

3.17 We were also referred to the case of **Zambia Revenue**

Authority v Jayesh Shah ⁽⁴⁾ in which it was held that:

“Cases should be decided on their substance and merit where there has been only very technical omission or oversight not affecting the validity of the process.”

4.0 ANALYSIS AND DECISION OF THIS COURT

4.1 We have considered the motion to reverse and discharge the decision of the single Judge, the affidavits, authorities cited and skeleton arguments filed by Counsel for the parties.

Before, we proceed in determining the motion, we must state categorically that the court frowns upon the current trend of parties, litigants and Counsel, who instead of simply responding to an application, raise preliminary objections, on which in turn subsequent preliminary issues are raised, convoluting simple issues.

4.2 We shall first address the objections raised by the 1st respondent. The 1st respondent argued that the notice of motion filed by the 1st appellant and its attendant affidavit have been amended without leave of Court by the endorsement of alternative or new dates.

4.3 The 1st respondent took issue with the change of dates on the 1st appellant’s notice of motion which was initially dated 19th December, 2023 as per “MDD1”. However, at page 18 of the

1st respondent's notice of motion, are two dates: a stamped date of 19th December, 2023, while at the bottom is a handwritten date of 18th January, 2024.

- 4.4 The affidavit in support deposited by State Counsel Bonaventure Mutale, has a stamped date of 19th December, 2023, while the deponent signed and endorsed affidavit on 19th January, 2024 which is also the same date stamped by the Court of Appeal's Commissioner for Oaths at page 24 of the record of motion. At page 34 of the record of motion filed by the 1st respondent, are two stamped dates. The first is for 19th December, 2023 which was later changed to 19th January, 2024 and a stamped date for 19th January, 2024.
- 4.5 We are inclined to the view, that it is not possible for the 1st appellant to have filed the record of motion on 19th December, 2023 containing an affidavit deposited by State Counsel Bonaventure Mutale dated 19th January, 2024 and endorsed by the Commissioner for Oaths on the same date. We take the view that the record of motion must have been filed on 19th January, 2024 on which same date the 1st respondent's advocates were served. That the date of 19th December, 2023 must have been a clerical error on the part of registry staff who attempted to rectify the anomaly.

- 4.6 On this basis, we find no merit in the application to set aside the 1st appellant's notice of motion which we have treated as an opposition to the 2nd respondent's notice of motion.
- 4.7 The issues raised in the motion by the 2nd respondent is whether the court has jurisdiction to determine any application under **CAZ/08/445/2022** aside from the application to dismiss the appeal for want of prosecution. Therefore, the 2nd appellant's appeal, ought to have been dismissed for want of jurisdiction/prosecution and or multiplicity of actions. Secondly, that the 2nd appellant's appeal in the said cause did not comply with the rules of the Court. In addition, whether consolidation of the two appeals is permissible where the 2nd appellant argued as 3rd respondent in **CAZ/08/430/2022** and seeks to appear as 2nd appellant under **CAZ/08/445/2022**.
- 4.8 We propose to first address the objections raised by the 1st appellant, that the motion is incompetently before us having been brought as if it is an appeal. We have perused the motion dated 27th September, 2023 by the 2nd respondent to reverse and discharge the decision of the single Judge. It is trite that an application or motion from a single judge to the full Court comes by way of a renewal and ought to be

presented as such and is not appeal.

- 4.9 The issue is whether the motion by the 2nd respondent is properly before us. The 2nd respondent's notice of motion was filed pursuant to **section 9(b) of the CAA** and **Order 10 rule 2(8) of the CAR**. Section 9(b) states that:

“A single judge of the Court may exercise a power vested in the Court not involving the decision of an appeal, except that—

(b) in civil matters, an order, direction or decision made or given in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Court.”

- 4.10 Order 10 rule 2(8) provides that:

“A person who is aggrieved by a decision of a single judge and who intends to have such decision varied, discharged or reversed by the court under section 9(b) of the Act shall, before the date of hearing of the application by the court, file three extra copies of the proceedings, including copies of the affidavits filed by the other party prior to the single judge's decision, for the use of the court.”

- 4.11 In exercising the jurisdiction conferred on it by **section 9(b) of the CAA**, as read with **Order 10 rule 2(8) of the CAR**, the Court does not sit as an appellate Court to review the decision of the single judge. The full Court proceeds by way of rehearing the application as it is renewed before the Court. We refer to the Supreme Court decision in **Zambia Telecommunications Company Limited v Muyawa**

Liuwa ⁽⁵⁾ which held that:

“Litigants proceed from a single Judge of the Supreme Court not by way of appeal but by way of renewal of an application.”

4.12 In our view, the provision of the law pursuant to which the application was made is correct. What is in contention are grounds upon which the motion is made. The said grounds are framed as follows:

- 1) *The Single Judge did not have the jurisdiction in CAZ/08/445/2022 to hear and determine any other application apart from the application to dismiss the 2nd appellant’s appeal for want of prosecution;*
- 2) *The Single Judge ought to have dismissed the 2nd appellant’s appeal under CAZ/08/445/2022 for want of jurisdiction, and/or want of prosecution and/or multiplicity of actions;*
- 3) *The appeal filed by the 2nd appellant under CAZ/08/445/2022 did not comply with the rules of court and should be dismissed, and/or;*
- 4) *The Single Judge was bound by the doctrine of stare decisis therefore the 2nd appellant’s appeal under CAZ/08/445/2022 should be dismissed for want of prosecution;*
- 5) *The Single Judge did not pronounce himself on whether the court had jurisdiction in CAZ/08/445/2022 when the issue of jurisdiction was raised before him; and*
- 6) *The Single Judge did not pronounce himself on whether consolidation is permissible where the Attorney General has already argued as 3rd respondent in CAZ/08/430/2022 and simultaneously seeks to appear as 2nd appellant under CAZ/08/445/2022.*

4.13 In the case of **Eastern and Southern African Trade and Development Bank V Antonio Ventriglia and Others** ⁽⁹⁾ we

stated in reference to an application to vary, discharge or reverse a decision of a single Judge that the application must be presented as one for reversal, variation or discharge of the single's decision.

4.14 The Court of Appeal in the case of **Benayah Nonde v Bornface Nande**⁽¹⁰⁾ guided in respect of the form and manner to move the Court from a ruling of a single Judge of the Court. In the above cited case, though the Applicant had presented correctly a motion pursuant to **Section 9(b) of the Court of Appeal Act**, the grounds on which the motion was based were couched as an appeal. We proceeded to dismiss the motion for being incompetent. We stated at page R3 to R5 as follows:

“In the case of Zambia Telecommunications Company Limited v Muyawa Liuwa, ⁽⁵⁾ a single Judge of the Supreme Court refused the applicant's application to the full court, which application he styled as an appeal. In interpreting Section 4(b) of the Supreme Court Act (SCA) which is on all fours as our Section 9(b) of CAA, the Supreme Court held that litigants proceed from a single Judge of the Supreme Court not by way of appeal but by way of renewal of the application”

4.15 Equally in the case of **Environmental Investigation Inc and 2 Others v Given Lubinda and 2 Others**⁽¹¹⁾, in interpreting **Section 9 (b) as read with Order X rule 2(8)** of the **CAR**, we

found that the motion was erroneously couched as an appeal. The said motion was dismissed.

4.16 In addition, the Supreme Court in **Rosemary Nyangu v Pamodzi Hotel PLC** ⁽¹⁾ in considering **Section 4(b) of the Supreme Court Rules** stated that:

“It is abundantly clear from the provisions quoted at paragraph 2.1 and 2.2 that an application or motion comes from a single judge to the full Court by way of renewal and ought to be presented as such. It is not an appeal requiring new grounds premised on the decision of the Single Judge for consideration by the full Court”

4.17 Perusal of the grounds upon which the application to vary reverse and discharge the single Judge’s decision in our view, is presented as an appeal faulting the Ruling of the single Judge. It is in substance couched as an appeal. Ground one is that the single Judge did not have jurisdiction in CAZ/08/445/2022 to hear and determine any other application etc. Ground two that the Judge ought to have dismissed the 2nd appellants appeal. Ground four that the single Judge is bound by the doctrine of stare decisis and the 2nd appellant’s appeal should be dismissed for want of prosecution. Grounds five and six that the single Judge did not pronounce himself on whether the court had jurisdiction

in CAZ/08/445/2022 and on whether consolidation is permissible where the Attorney General has already argued as 3rd respondent in CAZ/08/430/2022.

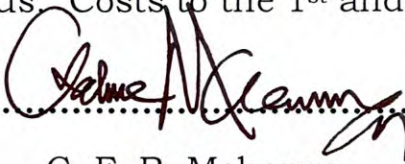
4.18 It is clear that that the motion is challenging the ruling of the single Judge of this Court and not a renewal of the application. The applications before the single Judge was to dismiss the 2nd appellant's appeal in CAZ/08/445/2022 for failure to comply with the rules and to consolidate the appeals in CAZ/08/430/2022 and CAZ/08/445/2022. Those are the applications which ought to have been renewed and not couched as an appeal in substance.

5.0 CONCLUSION

5.1 We come to the conclusion that the motion challenging the decision of the single Judge is in substance couched as an appeal and not a renewal. On this basis, we find the application incompetent by the Court.


5.2 For the foregoing reasons, we will not belabor to consider the contentions relating to the appeal being filed without meeting the conditions for leave, and the issue of the notice of appeal having been filed out of time without leave of court which precipitated the application to dismiss the appeal.

5.3 We accordingly dismiss the incompetent application by the applicant before us. Costs to the 1st and 2nd Appellants.


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C. F. R. Mchenga

DEPUTY JUDGE PRESIDENT


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F. M. Chishimba

COURT OF APPEAL JUDGE


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P. C. M. Ngulube

COURT OF APPEAL JUDGE