IN THE COURT OF APPEAL OF ZAMBIA **APPLICATION 108/2024**

HOLDEN AT KABWE

(Civil Jurisdiction)

REPUBLIC OF ZAMBIA
COURT OF APPEAL
04 DEC 2025
CIVIL REGISTRY 1
P.O. BOX 50067, LUSAKA

BETWEEN:

Pilatus Engineering Company Limited **1ST APPLICANT**

Joseph Huwiler **2ND APPLICANT**

And

Alfred Kalwani **RESPONDENT**

Coram: Chashi, Ngulube and Banda-Bobo, JJA
On 15th October, 2025 and 4th December 2025.

For the Applicant: **Mr. I. Simbeye of Messrs Malisa and Partners Legal Practitioners**

For the Respondent: **Mr. D. Mushenya of Messrs Wright Chambers**

RULING

Banda-Bobo, JA , delivered the Judgment of the Court.

Cases referred to:

1. Citibank Zambia Limited v Suhayl Dudhia (SCZ -Appeal No. 6 of 2022) (SC)
2. Antonio Ventriglia and Another v Finsbury Investments Limited (CAZ/08/126/2018)
3. Guardall Security Group Limited v Reinford Kabwe (CAZ/44/2019)
4. Chibote Limited and Others v Meridian BIAO Bank (Zambia) Limited (In liquidation) (2003) ZR 10
5. Phillip Mutantika and Another v. Kenneth Chipungu and Another (SCZ Judgment No. 13/2024)
6. Bellamano v Ligure Lombarda Limited (1976) ZR 267
7. Knox Magugu Mbazima v Tobacco Association of Zambia (SCZ/8/14/2021)

8. Trinity Engineering (pvt) Limited v Zambia National Commercial Bank Limited (1966) (SCZ Judgment No. 7/1996)
9. The Attorney General, Development Bank of Zambia v Gershom Moses Mutton Mumba (2006) ZR 77
10. Chick Masters Limited and Another v Investrust Bank Plc (SCZ Appeal No. 74/2014)
11. Development Bank of Zambia and Another (Receiver) v Christopher Mwanza and 63 Others (SCZ/8/103/08)
12. Bimzi Limited v B and P Commodities and Shipping Limited (SCZ/8/77/98)
13. Thynne v Thynne (1955) P272.CA
14. Re Blenheim Leisure Restaurants Limited No. 3 (1999) The Times, 9
15. Lamal v Circle – 33 Housing Trust (2014) EWCA, CIV 1514
16. Pineroads and General Contractors Limited and Others v Access Bank Zambia Limited, (CAZ Appeal No. 22/2022)
17. Zambia Telecommunication Company Limited v Mulwanda and Ng'andwe (SCZ Appeal No. 62/2009)

Legislation referred to:

1. The Court of Appeal Rules, Statutory Instrument No. 65 of 2016
2. The Rules of the Supreme Court of England 195 (1999 edition)
3. The Industrial and Labour Relations (Amendment) Act 2017
4. The Court of Appeal Act No. 7 of 2016

Other Works referred to:

- Halsbury's Laws of England, 3rd Edition

1.0 INTRODUCTION

1.1 This is a Ruling on an application by way of Summons, accompanied by an affidavit, seeking three Orders, vis:

(i) To set aside judgment;

(ii) Re-open the application to vary the decision of a single Judge of this Court for leave to appeal out of time, and

(iii) A stay of execution pending the determination of the appeal.

1.2 The application is made pursuant to Order 7 rule 1(i) and 2(i) of the Court of Appeal Rules (CARs) 2016, as read together with Order 20 rule 11 of the Rules of the Supreme Court (RSC) 1999 Edition, and the inherent jurisdiction of the Court of Appeal.

1.3 The Applicant seeks to set aside the Ruling rendered by this Court on 7th June 2022. That the Applicant's application filed into Court on 17th January 2022, seeking to vary the decision of a single Judge of this Court for leave to appeal out of time and for stay of execution pending the determination of the appeal, be re-opened for determination on its merits on the grounds that:

(1) In rendering its judgment remitting the matter for retrial before a different High Court Judge for want of jurisdiction on the part of the learned trial Judge who passed judgment, this Court did not determine the application in its entirety on its merits with finality,

(2) Following the Judgment of the Court in the case of **Citibank Zambia Limited v Suhayl Dudhia**[1] the learned Judge T. S. Musonda, to whom the matter was re-allocated

declined to retry the matter without according counsel for the respective parties, an opportunity to address her and the application for leave to appeal her decision was denied.

2.0 **BACKGROUND**

2.1 The brief background to this matter is that the Respondent herein had lodged a complaint against the Applicants in the Industrial Relations Court around about 1st December 2016. From what can be garnered from the record, the learned Judge in the Court below entered judgment in favour of the Respondent on 16th day of March 2016. At the time of hearing the matter, both Applicants were not before Court, so only the complainant, the Respondent now was heard. Thereafter the learned judge rendered his Judgment. The Judgment of the Court was rendered slightly over four (4) years and three (3) months after the complaint was filed.

2.2 On 23rd March 2021, the Applicants applied before the lower Court to set aside the Judgment of Mwansa J, for having been obtained in the absence of the Applicants. The application was denied on 23rd April 2021, without hearing

the parties. In his Judgment and Ruling, the learned Judge did not grant leave to appeal. Consequently, the Applicants applied for leave to appeal against both the Ruling and the Judgment, but this too was denied.

2.3 Subsequently, on 5th May 2021, an application was made before the same Court for leave to appeal out of time, and for a stay of Execution of the Judgment. The parties were not heard, and both applications were denied, as the learned Judge just endorsed on the draft order that **"Not granted. Reasons are not good enough"**

3.0 APPLICATION BEFORE A SINGLE JUDGE OF THIS COURT

3.1 Dissatisfied with the decision of the lower Court, the Applicants on 10th March 2021, filed an application before a single Judge of this Court, for leave to appeal out of time, and for a stay of Execution of the judgment of the Court below pending the determination of the appeal. The matter was heard by a single Judge of this Court; who on 27th August 2021, delivered her Ruling dismissing the application.

4.0 **APPLICATION TO VARY THE DECISION OF A SINGLE JUDGE**

4.1 Dissatisfied with the decision of the single Judge of this Court, the Applicants escalated the application to the full Court, seeking to vary the single Judge's decision.

5.0 **THE DECISION OF THIS COURT**

5.1 During the course of the hearing, learned Counsel for the Applicants raised a jurisdictional issue, namely that the Judgment of the lower Court was delivered outside the one year time limit prescribed by the Industrial and Labour Relations (Amendment) Act.

5.2 On 7th June 2022, this Court rendered a Ruling on the application to vary the decision of a single Judge of this Court for leave to appeal out of time and for a stay of execution pending the determination of the appeal.

5.3 We stated, in our Ruling that the law is settled that when a jurisdictional issue is raised, it must be addressed before moving onto any other issue, as guided in the case of **Antonio Ventriglia and Another v Finsbury Investments Limited[2].**

5.4 With regard to the issue raised, we placed reliance on our decisions in the case of **Citibank Zambia Limited v Suhayl Dudhia**[1], in which we upheld our decision in the case of **Guardall Security Group Limited v Reinford Kabwe**[3]

5.5 We found that the Judgment of the lower Court had been rendered over four (4) years after the complaint was lodged by the Respondent in the IRD.

5.6 Based on the above, we set aside the Judgment of Mwansa J, as we did in the earlier cases, and ordered the record to be remitted to the IRD for re-hearing before another Judge of competent jurisdiction.

6.0 **MATTER BEFORE HON T. S. MUSONDA**

6.1 The matter was re-allocated to Hon Justice T. S. Musonda. Parties appeared before Court through counsel, on 15th June 2023.

6.2 The learned Judge stated that the matter had been referred from the Court of Appeal in its Ruling of 7th June 2022; and that that Ruling set aside the Judgment of Mwansa, J. The learned Judge then went on to state thus:

"As parties are aware, the Supreme Court on 10th March, 2023, delivered its decision in Citibank Zambia Limited v Suhayl Dudhia (Appeal No. 6/2022) in which it clarified the one year limitation period as provided for in Section 19(3)(b) (ii) of the Industrial and Labour Relations Act. At paragraph 5.53, the Supreme Court held that the Guardall Security Group Limited case was reversed, and by necessary implication, all cases and decisions based on or arising from the Guardall Security Group Limited case would suffer the same fate. By implication, the Judgment that was rendered by the Court in the Citibank Zambia Limited, although delivered after the one year limitation period was held not to be a nullity at paragraph 5.54 of the Supreme Court Judgment."

6.3 The learned Judge then went on to state that arising from the Supreme Court Judgment, it followed by implication, that in the case at hand, the Judgment of Justice E. Mwansa stands.

6.4 She stated that, that being the case, she had no jurisdiction to take further steps. That the parties were restored to their original positions after the delivery of the trial Court's Judgment.

7.0 **THIS APPLICATION**

7.1 It is that decision that has birthed the current application. The Applicants seek the setting aside of our Ruling rendered on 7th June 2022, so that the application that they filed on 17th January 2022, seeking to vary the decision of a single Judge, for leave to appeal out of time, and for a stay of execution, pending the determination of the appeal be re-opened for determination on its merits.

7.2 The application was accompanied by an affidavit sworn by Isaac Simbeye, counsel for the Applicants. He deposed that on 2nd November 2021, the Applicants had filed an application to vary the decision of a single Judge of this Court for leave to appeal out of time and for a stay of execution. Counsel referred to our Ruling of 7th June 2022 in which we remitted the matter to the High Court, and the decision of Hon. T. S. Musonda of 15th June 2023, where she declined jurisdiction. That the Applicants only received the Ruling in November 2024.

7.3 That their application to appeal Judge T. S. Musonda's Ruling was denied on 11th September 2024.

7.4 That it is premised on the foregoing that he verily believed that in the circumstances of this case, they can apply for the setting aide of this Court's Ruling of 7th June 2022 and re-open the application to vary the decision of a single Judge of this Court, denying leave to appeal out of time, and for a stay of execution pending the determination of the appeal pursuant to Section 9(b) of the Court of Appeal Act and Order 10 rule 4 (6) and (7) and Rule 5 of the Court of Appeal Rules (CARs).

7.5 That they did not file the Notice and Memorandum of Appeal within the stipulated time as they had made an application to the Court below that the assailed Judgment be set aside for having been obtained in the absence of the Applicant, but the Court refused to grant the application.

8.0 **AFFIDAVIT IN OPPOSITION**

8.1 The application was opposed by way of an affidavit in opposition, sworn by counsel Mushenya, and filed on 9th October 2025. Counsel began by stating that this Court rendered a Ruling on 7th June 2022 and not a judgment. That the said Ruling was on a preliminary issue raised by

the Appellant's counsel during the substantive appeal. It is that preliminary issue that birther the Ruling, where the Court declined to hear the substantive appeal as it deemed itself bereft of jurisdiction.

8.2 Regarding the Ruling by the single Judge of this Court, rendered on 27th August 2021, it was averred that the Respondent had at that time opposed the application to vary the decision of the single Judge, because it agreed with the single Judge's reasoning when she refused to grant the application. It was reiterated that the Applicants are the ones who raised a preliminary issue questioning the jurisdiction of this Court to render judgment after the stated period; and this led to the Court not considering all the other issues raised. That the Court remitted the matter to the High Court for re-hearing. That however, by the time the matter came up for hearing before a new Judge, the law had changed, and the Judge declined to hear the matter as she no longer had jurisdiction. Counsel averred that this is not a proper case for this Court to set aside its Ruling and re-open the application to vary the

decision of the single Judge of this Court denying leave to appeal out of time and for a stay of execution pending determination of the appeal.

9.0 **APPLICANTS' SKELETON ARGUMENTS**

9.1 The Applicants filed a list of authorities and Skeleton Arguments in support of their application.

9.2 As a starting point, the provisions of Order 7 rule 1(1) and 2(1) of the CARs, were adverted to, on how applications to this Court may be made. That the current application is thus rightly before us. Further, that the Ruling remitting the matter to the lower Court was made by the full bench, and thus the application is rightly made to the full bench.

9.3 Regarding this Court's jurisdiction to re-open, vary or set aside its decision, it was stated that the Rules of this Court are silent on this issue, but that Rule 11 of Order 20 of the Rules of the Supreme Court (RSC) provides guidance, with respect to amendment of Judgments and Orders thus:

> **"Clerical mistakes in judgments or orders or errors arising therein from any accidental slip or**

omission, may at anytime be corrected by the Court on motion or summons without appeal."

9.4 Counsel then went on to quote the explanatory note to the above rule, where the authors stated:

> **"This rule therefore applies only in cases where there is a clerical mistake in a judgment or order or an error arising from an accidental slip or omission. <u>Apart from the rule, the Court has an inherent power to vary its own orders</u> so as to carry out its own meaning and to make its meaning plain (Thynne v Thynne, 4955) P. 272. CA ..."**
>
> **The court has no jurisdiction under this rule to correct a slip touching reasons rather than a decision, <u>but the court has inherent power to correct such reasons</u> (Hazeltine Corp v International Computers Limited (1950) F. S. R. 521).**
>
> **An order made without jurisdiction, even if it is a consent order and has been acted on, cannot be amended under this Rule or under the inherent jurisdiction of the court, e.g. by altering the date on which it was made <u>but it must be discharged</u> (Munks v Munks (1985) Fam. Law 131 CA). A mistake as to the legal effect of a conventional**

order cannot be susceptible to amendment under this rule (Molnlycke AB v Procter and Gamble (No. 6) 1993) FRS 154"

9.5 It was submitted, based on the above, that this Court has inherent jurisdiction, in deserving matters, such as this one, to re-open matters previously closed and vary its decisions. To buttress, our attention was called to the case of **Chibote Limited and Others v Meridian BIAO Bank (Zambia) Limited (In liquidation)**[4] where the Supreme Court held that:

> **"An appeal determined by the Supreme Court will only be re-opened where a party through no fault of its own has been subject to an unfair procedure, and will not be varied or rescinded merely because a decision is subsequently thought to be wrong."**

9.6 Further reliance on this issue was placed on the case of **Finsbury Investments and Other v. Antonio Ventriglia and Another**[2] where the Court said:

> **"Clearly, as the foregoing authorities establish, this Court has unfettered inherent jurisdiction and in appropriate cases, it can reopen its final decisions and rescind or vary such decisions. This Court will not, however, reopen its decision merely on the**

ground that a party to that decision is dissatisfied with it and wants a more favourable decision. In our considered view, the power of this Court to reopen its decision can only be invoked in exceptional circumstances where the interest of justice demands that to be done. In Re Uddin (a Child)[4], Dame Elizabeth Butler-Loss P, summarized the circumstances in which an appellate court can reopen its final decision as follows:

'the Court of Appeal or the High Court will not reopen a final determination of any appeal unless- (a) it is necessary to do so in order to avoid real injustice; (b) the circumstances are exceptional and make it appropriate to reopen the appeal; and (c) there is no alternative effective remedy.'

In our view, this is a proper case where this Court can reopen its decision. This inherent unfettered jurisdiction must be weighed against an equally important principle of the finality of this Court's decisions and the principle of *functus officio*. This Court can only invoke its unfettered inherent jurisdiction where the interests of justice demand that to be done; where the interests of justice outweigh the equally essential principles of finality and *functus officio*".

9.7 It was submitted that in this matter, the conditions of re-opening the Court's final Ruling have been met, in that it

is necessary to avoid real injustice, the circumstances are exceptional and make it appropriate to re-open the application, as the matter was remitted to the High Court, which has since declined to rehear it. Further, that there is no alternative remedy in the circumstances.

9.8 As regards the argument for stay of execution, reliance was placed on Order 10 rule 5 of the CARs, and Order 59 rule 13 (9) RSC and counsel urged us to grant a stay of execution of the Judgment pending the determination of the applications, and that if leave is granted, the stay should be extended until the determination of the appeal.

10.0 **RESPONDENT'S SKELETON ARGUMENTS IN OPPOSITION**

10.1 As a starting point, the Respondent questioned the competence of the application before Court, contending that it is a blatant abuse of court process. Counsel contended that Order 7(1) and 2(1) of the CARs does not cloth the Court with authority to set aside a judgment and or re-open an application.

10.2 Counsel questioned the making of the application to the full court and not the single Judge, disagreeing with the

reasoning for proceeding in that manner. Counsel contended that the application should have been made in the first instance to a single Judge. That this is what Order 7 rule 2(1) CARs provides. That this provision is couched in mandatory terms. To buttress on the issue of the order being mandatory, we were referred to the case of **Phillip Mutantika and Another v. Kenneth Chipungu and Another**[5]. That the Order being mandatory, failure to comply with it rendered the application invalid, hence the application should be dismissed.

10.3 As regards the Applicant's reliance on Order 20 rule 11 RSC, counsel was of the view that there is no *lacuna* in our rules, and the rules are not silent on the issue of amendment of judgment. It was his argument that infact the rules of this Court actually make provision for dealing with clerical errors, accidental slips or omissions. To that effect, Order 13 rule 8(4)(1) of the CARs was cited, with counsel contending that this Order allows a Court to correct clerical errors arising from any accidental slip or omission. Further reliance was placed on the cases of

Bellamano v Ligure Lombarda Limited[6] and **Knox Magugu Mbazima v Tobacco Association of Zambia**[7] on the need for applicants to cite the order on which an application or relief is sought. That thus to assert that the Rules of this Court are silent on this issue is a misrepresentation.

10.4 It was contended, as regards the jurisdiction to re-open and vary or set aside decisions, that the applicants have not met the requisite threshold for this Court to invoke the slip rule. The Respondent went on to cite among others, the cases of **Trinity Engineering (pvt) Limited v Zambia National Commercial Bank Limited**[8] and **The Attorney General, Development Bank of Zambia v Gershom Moses Mutton Mumba**[9], on what the slip rule is meant to achieve, and that this rule is meant for the court to correct clerical mistakes or errors in a judgment arising from accidental slips or omissions. Halsbury's Laws of England, 3rd Edition Vol 22, paragraph 1666 was also adverted to, to augment on the same issue.

10.5 That in *casu,* the Applicants have cherry-picked some paragraphs under Order 20/11/1 RSC, which explains the effect of the rule to suit their position. Counsel went on to reproduce the said Order in total, and went on to argue that the slip rule does not envisage the setting aside of a judgment or ruling or order complained of, nor is it meant for rehearing of any particular matter. That the slip rule is clearly meant for the court to correct clerical mistakes or errors in a judgment emanating from accidental slip or omissions. That however, this Court is being invited to invoke this rule to set aside its Ruling, which is not tenable. That there is no clerical mistake or error in the Ruling. That the decision of the Court was the correct one at that time as a precedent had already been set in the **Citibank Zambia Limited v. Suhaly Dudhia**[1] and **Guardall Security Group Limited v Reinford Kabwe**[3].

10.6 Further, that the Court was obliged to resolve the jurisdictional issue before it could delve into any other issues, as per the case of **Antonio Ventriglia and Manuela Ventriglia v. Finsbury Investment Limited**[2].

Counsel reiterated that there was no clerical mistake or errors in this Court's Ruling arising from accidental slip.

10.7 It was contended that the Applicant had a choice, in dealing with the dissatisfaction of the Ruling, to either appeal the same or renew their application for leave to appeal out of time before a single Judge of the Supreme Court. That by applying to this Court as they did, was an abuse of the machinery of the Court. There was submission on what court abuse entails, with reliance being placed on the case of **Chick Masters Limited and Another v Investrust Bank Plc**[10].

10.8 It was also submitted that there ought to be finality to litigation, and in support, the case of **Development Bank of Zambia and Another (Receiver) v Christopher Mwanza and 63 Others**[11] was adverted to on this point. That this is not a proper case for this Court to set aside the Ruling and re-open the application to vary the decision of the single judge of the court for leave to appeal out of time and for stay of execution pending the determination of the appeal.

10.9 The Respondent asked that we order the applicants to pay the Respondent's costs. However, we are of the view that this issue is improperly before us, as no application to that effect was made. We will thus not consider it.

10.10 Submitting on the question of the stay applied for, it was submitted that the applicants are not entitled to the same. Counsel went on to cite the case of **Bimzi Limited v B and P Commodities and Shipping Limited**[12] which case set out the principles for the grant of a stay of execution. It was argued that no good reason has been shown, nor special circumstances proffered for a stay to be granted.

10.11 It was further submitted that the power to grant a stay is discretionary, which discretion must be exercised judiciously and for good and convincing reasons. That in this matter, there is no justification upon which this Court can deprive the Respondent of the immediate enjoyment of the fruits of his judgment by ordering a stay.

10.12 We were urged to dismiss the application with costs to the Respondent.

11.0 **HEARING**

11.1 At the hearing, Mr. Simbeye relied on the summons and skeleton arguments in support, filed into Court on 5th December 2024.

11.2 Mr. Mushenya, counsel for the Respondent relied on the affidavit and skeleton arguments in opposition filed on 9th October 2025, with brief oral augmentation.

11.3 Mr. Mushenya augmented that the application was not rightly before Court for two (2) reasons, vis:

(1) That Order 7(2)(1) CARs upon which the application is partly predicated is a mandatory provision. That it requires any application to be made to a single Judge in the first place. That it is not in dispute that the application in *casu* does not involve the decision of an appeal. That it thus ought to have been made to a single judge. That having failed to do so, the application is incompetently before Court.

(2) That the use of Order 20 RSC is wrong; as Order 13(8)(1) CARs is adequate. That resort to Order 20

should only have been had if there was no provision to that effect in CARs.

11.4 Further, that the CARs provision requires applications of this nature to be made within seven (7) days but in *casu*, the application was made way after the stated period, and no leave of court was obtained.

11.5 Alternatively, that the slip rule does not apply. That the decisions of this Court are not final, as appellants have other options; namely, they could have appealed or applied before a single judge.

11.6 Further, counsel contended that the Applicant has taken vexatious steps, and the Respondent was thus praying for costs even though the matter is an Industrial Relations Division case. That the issue of the stay was not argued.

11.7 Mr. Simbeye in Reply, contended that the application is properly before Court. That the matter had been before the full bench, and thus it was not tenable to apply before a single judge.

11.8 That resort was had to Order 20 RSC because the CARs do not provide for setting aside its own judgment. That the

power to set aside is only available on the inherent jurisdiction of the court.

12.0 **ANALYSIS AND DECISION**

12.1 We have carefully considered the affidavits and arguments filed for and against the Motion by each party.

12.2 Setting aside all the matters on the periphery, the issue for determination is whether this Court, can, using its inherent powers, set aside its Ruling, and re-open and hear the application to vary the decision of a single Judge which was not determined on its merits because the applicant had itself questioned the jurisdiction of the lower Court to determine the matter.

12.3 The Applicants contend that when we remitted the matter for re-trial before another Court in the High Court, this Court did not determine the Application to vary the decision of a single Judge in its entirety and on its merits and with finality. That therefore there is need for our Ruling to be set aside, and the application to vary the decision of a single Judge be re-opened so that it can be properly determined.

12.4 The Respondent on the other hand contends that the only power this Court has is to correct clerical errors or omissions and mistakes through the slip rule; and not to alter its judgment or re-open a case.

12.5 There is indeed no specific rule or provision under the Court of Appeal Act, and its Rules empowering the Court of Appeal to re-open, vary or set aside its decisions.

12.6 In urging this Court to grant the application, reliance has been placed on Rule 11 of Order 20 of RSC. This Order in its explanatory note, while acknowledging that only clerical mistakes in judgments can be corrected, goes on to state that a court has inherent power to vary its own orders or judgments, so as to carry out its own meaning and to make the meaning plain as per the case of **Thynne v Thynne**[13]. It is further explained that the Court has inherent power to correct such reasons.

12.7 Having looked at our Ruling, it is our view that this Order does not cloth this Court with any such inherent jurisdiction.

12.8 It is trite that once a court renders its judgment, the court becomes *functus officio*, and does not have jurisdiction whether inherent or otherwise, to deal with a particular matter except in very exceptional circumstances. A Court of Appeal can only re-open its decision under exceptional circumstances, where failure to do so would result in real injustice, far out-weighing the need for finality in litigation. In the case of **Re Blenheim Leisure Restaurants Limited**[14], Neuberger J, set out the circumstances in which the court might justifiably exercise its jurisdiction to re-consider and amend or vary its judgment or order, namely:

(a) where there has been a plain mistake on the part of the court;

(b) where there was a failure of the parties to draw to the court's attention, a fact or a point of law that was plainly relevant;

(c) Where there was discovery of new facts subsequent to the judgment being given, or

(d) where a party could argue that he was taken by surprise by a particular application from which the court ruled adversely to him and which he did not have a fair opportunity to consider.

12.9 In the case of **Lamal v Circle – 33 Housing Trust**[15], Sir Terrence Etherton enunciated that:

> **"The broad principle is that for an appeal to be re-opened, the injustice that would be perpetrated if the appeal is not re-opened must be so grave as to overbear the pressing claim of finality in litigation. There must be a powerful probability that the decision in question would have been different if the integrity of the earlier proceedings had not been critically undermined."**

12.10 In our own jurisdiction, the Supreme Court has had opportunity to determine this issue in a plethora of decisions. In the **Chibote Limited**[4] case cited to us by the Applicant, the Court categorically stated that:

> **"An appeal determined by the Supreme Court will only be re-opened where a party, through no fault of its own has been subjected to an unfair procedure, and will not be varied or rescinded merely because a decision is subsequently thought to be wrong."**

12.11 In our own decision, in the case of **Pineroads and General Contractors Limited and Others v Access Bank Zambia Limited**[16], we had this to say on this issue:

"Therefore, there is no procedure that allows this court to revisit that decision and set aside its judgment except in very rare circumstances. The rationale for not having such a procedure is that there would be no finality to litigation if the parties are allowed to re-litigate the matter."

12.12 In **Zambia Telecommunication Company Limited v Mulwanda and Ng'andwe**[17] the Supreme Court guided that:

> **"The general rule as to the amendment and setting aside of judgments or orders after a judgment or order has been drawn up was as follows:**
>
> **"Except by way of Appeal, no court or judge or master has power to rehear, review, alter or vary any judgment or order after it has been drawn up, respectively either in application made in the original action or matter, or in fresh action brought to review such judgment or order. The object of this rule is to bring litigation to finality."**

12.13 In our view, there are no exceptional circumstances that would compel this Court to exercise its inherent powers to set aside its Ruling, and re-open the application to vary the decision of a single Judge.

12.14 We have noted the reliance by the Applicants on the **Finsbury Investments Limited**[2] case, where the Supreme Court stated *inter alia*, that:

> **"we said we totally agree with the house of Lords (In the Pinochet case) on the unfettered inherent jurisdiction of the Court."**

12.15 However, in the same quoted **Pinochet** case, Lord Brown Wilkinson had stated *inter alia*, as quoted in the **Finsbury**[2] case that:

> **"As I have said, the respondents to the petition do not dispute that your Lordships have jurisdiction in appropriate cases to rescind or vary an earlier order of this house. In my judgment, that concession was rightly made, both in principle and on authority. In principle, it must be that your Lordships as the <u>ultimate Court of Appeal</u> have power to correct any injustice caused by an earlier order of this house. There is no relevant statutory limitation on the jurisdiction of the house in this regard, and <u>therefore its inherent jurisdiction remains unfettered</u> ... However, it should be made clear that the House will not re-open any appeal, serve in circumstances, where through no fault of a**

party, he or she has been subjected to an unfair procedure". (underline ours for emphasis).

12.16 It is patent from the above that the issue of inherent jurisdiction to re-open a matter only reposes in the final Court. In the **Pinochet** case, it was the House of Lords, the ultimate Court of Appeal. In our jurisdiction, only the Supreme Court, as the ultimate appellate court, has inherent jurisdiction to vary its judgment or re-open an appeal. This Court, not being the final arbiter, does not have inherent jurisdiction to set aside or alter its judgment or Ruling. Consequently, we cannot use our inherent jurisdiction to re-open this matter.

12.17 Further, we do not believe that any of the circumstances that would compel us to re-open the matter exist in this case. There is no evidence that the Applicants were subjected to an unfair process when we delivered our Ruling. In fact, they are the ones who raised the issue of jurisdiction and our Ruling reflected their views.

12.18 We find no merit in this application.

12.19 Having held thus, the application to stay execution falls away as it was premised on the earlier application succeeding.

13.0 Each party to bear own costs, as this is an Industrial Relations Division matter.

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J. CHASHI
COURT OF APPEAL JUDGE

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P. C. M. NGULUBE
COURT OF APPEAL JUDGE

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A. M. BANDA-BOBO
COURT OF APPEAL JUDGE