

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

**CAZ/08/331/2024**

BETWEEN:

**JENNIFER TEMBO NJOVU**

**APPELLANT**

AND

**ADMINISTRATOR GENERAL**

**RESPONDENT**



**BEFORE: HONOURABLE MR. JUSTICE M. M. KONDOLO**  
**SC, JA IN CHAMBERS**

*For the Appellant: Mr. L. Chilingala of Messrs Kalokoni & Company*

*For the Respondent: Ms. M. Kamelu – Legal Officer, Administrator  
General’s Office*

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**R U L I N G**

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CASES REFERRED TO:

- 1. JCN Holdings Ltd v Development Bank of Zambia  
SCZ/22/2013**
- 2. Henry Sampa & Another v Abshishek Vijaykumar Patel  
SCZ/8/03/2022**
- 3. Finance Bank Ltd v Frank James Kalambata SCZ/4/2013**

STATUTES & PUBLICATIONS REFERRED TO

- 1. Court of Appeal Rules, Statutory Instrument No. 65 of  
2016**

**2. Supreme Court Rules Statutory Instrument No. 26 of 2012**

**3. Rules of the Supreme Court (Whitebook) 1999 Edition**

**1. INTRODUCTION**

- 1.1. Dissatisfied with a Ruling of the High Court delivered by Justice C. Chinyama Zulu on the 6<sup>th</sup> day of March 2021, the Appellant filed a Notice of Appeal and Memorandum of Appeal on 10<sup>th</sup> July, 2024.
- 1.2. The Respondent reacted on 23<sup>rd</sup> September, 2024 by filing a Notice of Motion to Dismiss Appeal for Irregularity and Want of Jurisdiction pursuant to **Order 10 Rule 3 (5)** as read together with **Order 13 Rule 5 (1) Court of Appeal Rules Statutory Instrument No. 65 of 2016 (CAR)** because the said Notice of Appeal and Memorandum of Appeal were filed about 120 days after the date of the Judgment.

**2. RESPONDENTS (APPLICANT) CASE**

- 2.1. The Respondents application was supported by an Affidavit and Skeleton Arguments of even date. The arguments were supplemented viva voce at the hearing.

- 2.2. The gist of the Respondents submissions was that, as per **Order 10 Rule 3 (5) CAR**, the Appellant ought to have filed the Notice of Appeal and Memorandum of Appeal within 30 days from the date of the Judgment.
- 2.3. That searches were conducted at the High Court and Court of Appeal Registries, respectively on 15<sup>th</sup> and 22<sup>nd</sup> July, 2024. It was established that no leave to file the Notice of Appeal and Memorandum of Appeal out of time was obtained from either Court.
- 2.4. That in the absence of leave, this Court has no jurisdiction to preside over this Appeal and cited the case of **JCN Holdings Ltd v Development Bank of Zambia** <sup>(1)</sup> where it states that; *“where a matter is not properly before Court, that Court has no jurisdiction to make any Orders or grant any remedies.”*
- 2.5. That **Order 10 Rule 3 (5) CAR** is couched in mandatory terms to the effect that the Notice of Appeal **“shall”** be filed within 30 days of the Judgment being delivered. It was argued that time starts running from the moment the Judgment is delivered and lack of knowledge by either party that the Judgment has been delivered does not stop time from running.

### 3. APPELLANTS CASE

- 3.1. The Appellant opposed the application with an Affidavit and Skeleton Arguments. She stated that it was only on 11<sup>th</sup> June, 2024 that she became aware of the Judgment delivered on 6<sup>th</sup> March, 2024.
- 3.2. That the time within to file the appeal process therefore only started running from the 11<sup>th</sup> June aforesaid and leave to file the process was not required because it was filed before the 30 days expired.
- 3.3. The Appellant referred to **Rule 12 (2) of the Supreme Court Rules Statutory Instrument No. 26 of 2012 (SCR)** which is similar to **Order 13 Rule 3 (10 and (2))** and referred to the case of **Henry Sampa & Another v Abshishek Vijaykumar Patel** <sup>(2)</sup> where Chinyama JS stated as follows on when time should begin to run; “I should add that where the applicant is not aware of the delivery of the Judgment, Ruling or decision to which the application relates, time begins to count from the date when the Judgment, Ruling or decision was served on the applicant.”

3.4. It was submitted that leave to appeal having been granted by the learned trial Judge the Appellant was free to appeal and time started running when the Judgment was served on her.

#### **4. RESPONDENTS REJOINDER**

4.1. The Respondent rejoined by stating that the Henry Sampa Ruling was in respect of **Rule 12 (2) SCR** whilst the premise of the application in casu is **Order 10 Rule 3 (5)** which makes it mandatory to file the Notice of Appeal within 30 days after the Judgment has been delivered and not from the date of service.

#### **5. HEARING**

5.1. At the hearing the Respondent relied on the filed process supporting the application.

5.2. The Appellant submitted that whilst **Order 10 Rule 3(5) CAR** provides for when time should run it is silent on what happens in instances where the Judgment has not been served on a party. That adopting a literal interpretation of the Order to the current case would lead to an unreasonable and unjust situation for the Appellant.

- 5.3. We were urged to adopt **Order 42/3/9 Rules of the Supreme Court (Whitebook) 1999 Edition (RSC)** which states that *“the time to appeal to the Court of Appeal runs from the time when the Judgment or Order is signed, entered or otherwise perfected. See O.59. r.4(1) and notes”*. According to the Appellant the “perfection” means fully completed or accomplished and where the Court’s decision has not been communicated to a party the process cannot be said to have been completed.
- 5.4. The Appellant further cited the case of **Finance Bank Ltd v Frank James Kalambata** <sup>(3)</sup> where the Supreme Court agreed that, on the basis of **Order 42/3/9 RSC**, the time to appeal should run from the time the Judgment is signed or perfected.
- 5.5. It was argued that on account of the foregoing, the Notice of Appeal and Memorandum of Appeal were filed within time.
- 5.6. The Appellant further complained that Courts were taking long to deliver Judgments and the movement of Judgments was causing delay in the parties receiving them on time as they were sometimes not placed in the pigeon holes by the Judge’s marshals resulting in delays such as in casu.

5.7. The Respondent replied by stating that Judgments are placed in pigeon holes and that that is where the Respondent found its copy of the Judgment.

## 6. DECISION AND ANALYSIS

6.1. I have considered the process filed and arguments advanced by the parties and it appears that the main question for determination is when time for filing an appeal from a Judgment of the High Court to the Court of Appeal begins to run. The answer to the question will determine whether the Notice to Appeal was filed within the prescribed time.

6.2. The starting point is **Order 10 Rule 3 (5) CAR** which reads as follows;

(5) The Notice of Appeal and Memorandum of Appeal shall be entitled in the proceedings from which it is intended to appeal and shall be filed with the Registrar within thirty days after the Judgment appealed against.”

6.3. I have considered with deference, the opinion of Chinyama JS in **Henry Sampa & Another** *supra* and would have to agree with Counsel for the Respondent that it does not apply to **Order 10 Rule 3 (5) CAR** which is couched in mandatory

terms and we as Courts cannot interfere with statutory time frames unless the Statute itself permits.

- 6.4. Nothing indicates that the 30-day period prescribed by the said **Order 10 Rule 3 (5)** stops running because a party has been prevented from complying with the time-frame on account of having not been served with the process.
- 6.5. I have also considered the Appellants plea that I consider adopting the procedure set out in **Order 42/3/9 RSC**. Quite apart from the fact that in our jurisdiction, the **RSC** only applies in the Court of Appeal where there is a *lacuna* in our rules, I note that **Order 49/4/4A RSC**, in any event, states that in the case of Judgments or Orders from the High Court the time for filing an appeal to the Court of Appeal runs from the date on which the Judgment was sealed. Therefore, the Appellants argument on that front collapses.
- 6.6. The running of time therefore has completely nothing to do with the service of Judgments upon parties. The reason for this is obvious as **Order 13 Rules 3 (1) CAR** provides as follows;

*(1) The Court may for sufficient reason extend the time for -*

- (a) *Making an application, including an application for leave to appeal;*
- (b) *Bringing an appeal; or*
- (c) *taking any step in or in connection with an appeal.*

6.7. Where a party finds itself out of time to appeal, the correct course of action is to apply to extend time under the relevant provision under **Order 13 Rules 3 (1), (2) or (3) CAR.**

6.8. A party who fails to comply with **Order 10 Rule 3 (5)** because of not having been served with the Judgment would cite that as a reason when applying for an extension of time or for leave to extend time under **Order 13 CAR.**

6.9. In the premises, this application to dismiss appeal for irregularity and want of jurisdiction succeeds because the Appeal is improperly before Court as the Notice of Appeal was filed outside the mandatory time-frame prescribed by **Order 10 Rule 3 (5).**

6.10. Costs are awarded to the Respondent.

***Dated at Lusaka this 31<sup>st</sup> day of December, 2025.***



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**M. M. KONDOLO, SC  
COURT OF APPEAL JUDGE**