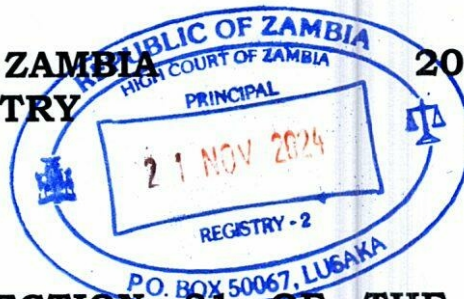


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**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)



2021/HP/1573

**IN THE MATTER OF: SECTION 81 OF THE LANDS AND
DEEDS REGISTRY ACT, CHAPTER 185
OF THE LAWS OF ZAMBIA**

AND

**IN THE MATTER OF: ORDER 6, RULE 1 (3) AND ORDER 30
RULE 11 OF THE HIGH COURT ACT,
CHAPTER 27 OF THE LAWS OF ZAMBIA**

**IN THE MATTER OF: THE REMOVAL OF CAVEATS
REGISTERED AGAINST SUBDIVISION
NO. 70 OF FARM NO. 284a AND
SUBDIVISION "A" OF SUBDIVISION NO.
71 OF FARM NO. 284a, BWINJIMFUMU
ROAD, FAIRVIEW, LUSAKA**

BETWEEN:

RASHMI ISHVERDATT JOSHI

APPLICANT

AND

GRANDVIEW PROPERTIES LIMITED

RESPONDENT

**BEFORE: HONOURABLE, LADY JUSTICE G. C. CHAWATAMA IN
CHAMBERS ON THE 24TH MAY, 2024**

For the Applicant : Mr. K. Daka of Messrs. Christopher, Russell Cook &
Company
For the Respondent : Mr. Chitambala of Messrs. Lukona Chambers

RULING

CASES REFERRED TO:

1. *Mususu Kalenga Building Limited and Another v Richman's Money Lenders Enterprise* SCZ Judgment No. 4 of 1999
2. *Zulu v The People* (1968) ZR 92
3. *Bank of Zambia v Tembo & Others* (2002) ZR 103
4. *Jonathan Lwimba Mwila v World Vision Zambia Limited* Appeal No. 193 of 2005
5. *Josphael Mbizule, Asphalt Roads (Z) Limited v Milan Gordic*, Court of Appeal No. 09/2021
6. *Buchman v Attorney General* (1993-1994) Z.R 131
7. *Philip Mutantika and Mulyata Sheal v Kenneth Chipungu* Appeal No. 94 of 2012
8. *Aristo Gerasmos vangelatos Another v Metro Investments Limited and 3 Others* SCZ Selected Judgment No. 35 of 2016
9. *Nkhuwa v Lusaka Tyre Services* (1977) ZR 43

LEGISLATION AND OTHER WORKS REFERRED TO:

1. *The Court of Appeal Rules Act No.7 of 2016*
2. *The High Court Act Chapter 27 of the Laws of Zambia.*

1.0 INTRODUCTION

- 1.1 The delay in delivering this Ruling is deeply regrettable, the delay was due to the fact that the Court record went missing.
- 1.2 This is a composite Ruling on two applications by the Applicant for an Order for leave to appeal and for an Order for extension of time within which to appeal out of time. The applications are made pursuant to **Order X Rule 4 (3) of the Court of Appeal Rules Act No.7 of 2016** as read together with **section 13 of the High Court Act Chapter 27 of the laws of Zambia**. The said provisions provide that:

Order X Rule 4 (3)

An application to the High Court or quasi-judicial body for leave to appeal to the Court shall be by motion or summons and state the

grounds of the application, and shall, if necessary, be supported by an affidavit.

Section 13

In every civil cause or matter which shall come in dependence in the Court, law and equity shall be administered concurrently, and the Court, in the exercise of the jurisdiction vested in it, shall have the power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or reliefs whatsoever, interlocutory or final, to which any of the parties thereto may appear to be entitled in respect of any and every legal or equitable claim or defence properly brought forward by them respectively or which shall appear in such cause or matter, so that, as far as possible, all matters in controversy between the said parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided; and in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

2.0 HISTORICAL BACKGROUND

- 2.1 The brief facts leading to the Applicant's application, is that on the 15th January, 2024, this Court delivered judgment in this matter in favour of the Applicant herein.

3.0 THE APPLICANT'S APPLICATION

- 3.1 In the affidavit in support sworn by Rashmi Ishverdatt Joshi, the Applicant herein, deposed that on about 10th December, 2021, the Applicant caused to be issued out of the principal Registry of the High Court for Zambia originating process by way of originating summons and affidavit in support in which the Applicant requested for an order of removal of caveats placed on subdivision no. 70 of farm 284a, Lusaka and subdivision A of subdivision no. 71 of farm No. 284a, Lusaka.
- 3.2 It was averred that on or about the 15th January 2024, this Court delivered a judgment in which it ordered the removal of the caveats placed on the properties. That the Court additionally proceeded to order the rescission of the contract of sale that was signed between the deponent and the Respondent whose effect would be that the parties assume the positions that existed before the contract was entered into and that whatever was done by the parties when the contract was entered into be reversed.
- 3.3 Further that while the deponent satisfied with the order granting the removal of the caveats, the Applicant is desirous of appealing the portion of the judgment relating to the rescission of the contract of sale, the result of which has led to the Applicant to lose the right under the Law Association of Zambia

General Conditions of sale to retain the deposit made by the Respondent under the contract. A copy of a Notice to Appeal and Memorandum of Appeal was exhibited and marked "RIJ1".

- 3.4 That the deponent was advised by his advocates, whose advise, the deponent verily believe to be true that his appeal has prospects of success if it is brought before the Court of Appeal for determination. That the deadline for appealing the judgment of this Court to the Court of Appeal was on 15th February, 2024. Also, that this Court has the discretion to extend the time within which the Applicant can appeal the judgment to the Court of Appeal.

4.0 OPPOSITION

- 4.1 On the 06th May, 2024 the Respondent filed an affidavit in opposition and skeleton arguments.
- 4.2 That the fact of rescinding the contract of sale entered between the Applicant and the Respondent was raised within the proceedings before this Court by the Applicant. That the deponent was advised by the advocates for the Respondent and so reasonably believe that this Court was entitled to pronounce itself on the effect of rescission to the contract. That the suggestion by the Applicant that this Court made an additional order for rescission is therefore not true.

- 4.3 Further that it is an attempt to relitigate this dispute on appeal. The deponent was advised by the Respondent's Advocates and do verily believe that at no point in these proceedings was the matter of purported rights under the Law Association of Zambia General conditions of sale subject of litigation to warrant it being the premise of an appeal or at all.
- 4.4 It was averred that the intended appeal has no chance of success. That the deponent was advised by the Respondent's advocates and do verily believe the same to be true that this Court has already exercised its power to grant leave to appeal within the judgment intended to be appealed against, it cannot do so again in the application now under determination.
- 4.5 In the list of authorities and skeleton arguments in opposition filed it was argued that the Respondent opposes the Applicant's application for leave to appeal and extension of time on essentially three grounds that:
1. *This Court has no jurisdiction to hear and determine the application for leave to appeal, it is funtus officio.*
 2. *There is no ground for grant of leave.*
 3. *There is no premises for granting of any extension of time within which to appeal.*

This Court was then referred to the cases of ***Mususu Kalenga Building Limited and Another v Richman's Money Lenders Enterprise SCZ Judgment No. 4 of 1999¹, Zulu v The People (1968) ZR 92², Bank of Zambia***

v Tembo & Others (2002) ZR 103³, Jonathan Lwimba Mwila v World Vision Zambia Limited Appeal No. 193 of 2005⁴, Josphael Mbizule, Asphalt Roads (Z) Limited v Milan Gordic, Court of Appeal No. 09/2021⁵, Buchman v Attorney General (1993-1994) Z.R 131⁶, Philip Mutantika and Mulyata Sheal v Kenneth Chipungu Appeal No. 94 of 2012⁷, Aristo Gerasmos vangelatos Another v Metro Investments Limited and 3 Others SCZ Selected Judgment No. 35 of 2016⁸.

5.0 CONSIDERATION AND DECISION BY THIS COURT

- 5.1 I have carefully considered the application before me, the affidavit in support, the oral and written arguments, and as well as the authorities cited. In this application before me, I will start by addressing the Applicant's application for leave to appeal. It is trite law, that there is need for a party to be granted leave to appeal if he is to exercise his right to appeal against the judgment of this Court.
- 5.2 In the current matter, although, vehemently opposed by the Respondent, the examination of the judgment on record reveals that when this Court delivered judgment in this matter on the 15th January, 2024 leave to appeal was not granted by this Court. Therefore, this is a proper case for such an application to be made in terms of Order X Rule 4 (3) of the Court of Appeal Rules.
- 5.3 Having established that leave to appeal is required against the Judgment rendered by this Court on 15th Janury, 2024, the

issue that arises for my consideration is whether or not this is a case warranting the grant of such leave. The instances upon which an application for leave to appeal will be granted is indicated under **Order 59 rule 14 subrule 18 of the Whitebook**. It states as follows:

"The general test which the Court applies in deciding whether or not to grant leave to appeal is this: leave will normally be granted unless the grounds of appeal have no realistic prospect of success. The Court of Appeal may also grant leave if the question is one of general principle, decided for the first time or a question of importance upon which further argument and a decision of the Court of appeal would be to the public advantage."

- 5.4 The reading of the above provision of the Whitebook reveals that leave can be granted as a general rule, except where the grounds of appeal have no realistic chance of success. As such in making an application for leave to appeal, the applicant must demonstrate to the Court that the grounds he has advanced or intends to advance have a realistic chance of success.
- 5.5 In advancing arguments in favour of the grant of leave to appeal, the Applicant in the affidavit in support of the application has stated that the Applicant is dissatisfied with the portion of the Judgment relating to rescission of the contract of sale of which has according to the Applicant lost his right under the Law Association of Zambia General Conditions of sale to retain the deposit made by the Respondent under the Contract. He has also indicated that the grounds of appeal the Applicant has

advanced in the notice of appeal and memorandum of appeal have a realistic prospect of success.

5.6 It is my considered view, that this application by the Applicant has merit. I accordingly find that this is a proper case for the grant of leave to appeal. I therefore accordingly grant the Applicant leave to appeal.

5.7 As regards the Second application which is extension of time within which to appeal out of time. It is trite law that the granting of an application for extension of time is in the sole discretion of the Court. The Supreme Court in the case of ***Nkhuwa v Lusaka Tyre Services***⁹ made the following pronouncement that:

“The grant of an application for extension of time is entirely within the jurisdiction of the Court but such discretion will not be exercised without good cause and in addition to the circumstances of the delay and the reasons thereof, which provide the material on which the Court exercises its discretion. Another most important factor is the length of the delay itself”

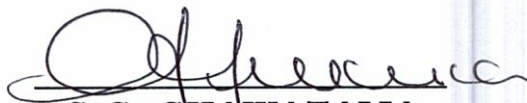
In applying the above guidance in the present case, as stated above Judgment in this matter was delivered on the 15th January, 2024. In the two applications before me, the Applicant filed on the 14th February, 2024. There was resolve on the Applicant to prosecute the appeal against the judgment of the

High dated 15th January, 2024. There was no inordinate delay on the part of the Applicant to prosecute the Applicant's intended appeal.

5.8 I hereby accordingly grant an extension of 14 days from date hereof to the Applicant to file their desired appeal.

5.9 I make no orders as regards costs.

DELIVERED AT LUSAKA THIS 21ST DAY OF NOVEMBER, 2024.


G.C. CHAWATAMA
HIGH COURT JUDGE