

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

**2023/HP/1567**



*BETWEEN:*

**NATHAN MITI AND 170 OTHERS**

**PLAINTIFF**

**AND**

**ZAMBIAN EXCELLENCE ENTREPRENEURSHIP HUB LTD** 1<sup>ST</sup> DEFENDANT

**RABSON MSONI** 2<sup>ND</sup> DEFENDANT

**LUSAKA UNION OF MARKETEERS CO-OPERATIVE** 3<sup>RD</sup> DEFENDANT

***BEFORE: HONOURABLE, LADY JUSTICE G. C. CHAWATAMA***

***IN CHAMBERS ON THE 07<sup>TH</sup> MAY, 2025***

*For the Plaintiff : Mr. F. Mumba from Messers Mushota and Associates*

*For the Defendant : Ex parte*

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## ***RULING***

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**CASES REFERRED TO:**

1. *Henry Kapoko v the People Selected Judgment 43 of 2016.*

**LEGISLATION AND OTHER WORKS REFERRED TO:**

1. *The High Court Act Chapter 27 of the Laws of Zambia.*

### **1.0 INTRODUCTION**

- 1.1 This is a Ruling on the application by the Plaintiff for leave to review judgment on assessment out of time. The

application was made pursuant to Order 39 Rule 2 of the High Court Rules.

1.2 Due to the position, I have taken in this matter, which shall become apparent hereunder, I find it unnecessary to reproduce the Plaintiff's affidavit in support of the application for review.

1.3 I have critically examined the record and the application before me. The application for review is made pursuant to **Order 39 rule 2 of the High Court Rules**, which provides that:

*"Any application for review of any judgment or decision must be made not later than fourteen days after such judgment or decision. After the expiration of fourteen days, an application for review shall not be admitted, except by special leave of the Judge on such terms as seem just".*

1.4 From the above rule, it is clear that any application for review of any judgment or decision must be made within 14 days after such a judgment or decision. The import of Order 39 rule 2 is that where an application for review of any judgment is made after 14 days, the Judge is empowered on "**terms as seem just**" to exercise discretion granting "**special leave**". The provision does not provide precise circumstances when such discretion may be exercised, save to state that "**on such terms as seem just**".

1.5 The evidence on record reveals that the learned Registrar delivered judgment on assessment on the 16<sup>th</sup> October, 2024. The timeframe within which to lodge the application for leave to review the assessment by the Plaintiff expired after 14 days from the 16<sup>th</sup> October, 2024. The Plaintiffs filed the application for review on the 14<sup>th</sup> February, 2025 after a period of more than 3 months. The plaintiffs have not advanced any reasons in their affidavit evidence for failure to file the application for review in over 3 months from the 16<sup>th</sup> October, 2024. I find a period of over 3 months of having failed to file, instead of the prescribed 14 days is inordinate.

1.6 Further, although counsel argued that **Article 118 (2) (e) of the Constitution** dictates that matters shall be administered without due regard to technicalities. The spirit and intent of **Article 118(2) (e)** has been subject of interpretation by the Constitutional Court in the case of **Henry Kapoko v the People<sup>1</sup>** that:

***“Article 118 (2) (e) is not intended to do away with existing principles, laws and procedures even when the same constitute technicalities, it is intended to avoid a situation where a manifest injustice would be done by paying unjustifiable regard to a technicality... rules are enacted with a purpose in mind, which purpose the rules must actually serve”.***

It is, therefore, my considered view that the Plaintiffs disobeyed the mandatory requirements of Order 39 Rule 2 and cannot cry foul, citing Article 118 (2) (e) of the

Constitution and expect to escape the consequences of the non-compliance of the Rules.

1.7 Having found blameworthy conduct on the part of the Plaintiffs, this Court is constrained to entertain the Plaintiffs' application for leave to review assessment. This is because the application is devoid of merit, it is therefore, dismissed accordingly.

1.8 I make no orders as regards costs.

1.9 Leave to appeal is hereby granted.

**DELIVERED AT LUSAKA THIS 06<sup>TH</sup> DAY OF MAY, 2025.**



**G.C. CHAWATAMA  
HIGH COURT JUDGE**