

**IN THE HIGH COURT OF ZAMBIA
AT THE ECONOMIC AND FINANCIAL
CRIMES REGISTRY
HOLDEN AT LUSAKA
(Criminal Jurisdiction)**

2024/HPEF/09

BETWEEN:

THE PEOPLE

APPELLANT

AND

GILBERT WILLS MULENGA

1ST RESPONDENT

IGNATIOUS MAKKAUMBA

2ND RESPONDENT

NEVERS NJOVU

3RD RESPONDENT

ACKSON TEMBO

4TH RESPONDENT

MALIWA MUWANEI

5TH RESPONDENT

BRUCE AONGOLA

6TH RESPONDENT



BEFORE THE HONOURABLE JUSTICES A. MALATA-ONONUJU, I. M. MABBOLOBOLO AND S. V. SILOKA, ON THIS 11TH DAY OF APRIL, 2025.

For the Appellant: Mr. S. Mainza – National Prosecution Authority;
Ms. N. Sendeme Chizyuka – Anti-Corruption Commission; and
Ms. Chisenga Chizalila – Anti-Corruption Commission.

For the 4th Respondent: Mr. C. Liato – Messrs. Andrew & Partners

For the 3rd Respondent: Ms. C. Siachika – Japhet Zulu & Advocates

For the 5th & 6th Respondents: Celine Nair & Company.

For the 2nd Respondent: N/A

R U L I N G

Justice S. V. Siloka delivered the Ruling of the Court.

CASE REFERRED TO:

1. *Citibank Zambia Limited Vs Dudhia (Appeal No. 6 of 2022) 2023 ZMSC.*

LEGISLATION REFERRED TO:

1. *Section 3 (1) of the Criminal Procedure Code (Economic and Financial Crimes Court) Rules, Statutory Instrument No. 10 of 2024 of the Laws of Zambia; and*
2. *Section 44 (1) (b) of the High Court Act Chapter 27 of the Laws of Zambia.*

1.0 INTRODUCTION

- 1.1 This Application emanates from an Appeal lodged by the Appellants against the decision of the Subordinate Court sitting at Lusaka.
- 1.2 The Application is for Leave to Amend Ground of the Appeal by substituting Ground One with an entirely new Ground.

2.0 AFFIDAVIT IN SUPPORT

- 2.1 The Affidavit in Support was deposed to by Stephen Mainza, a State Advocate in the employ of the National Prosecution Authority.
- 2.2 The Deponent deposed that on 1st October, 2024, the Appellant filed into Court a Notice of Appeal against the Judgment that was

delivered on the 23rd day of August, 2024, by the Lusaka Subordinate Court, under Cause No. ISPC/050/2022.

2.3 The Deponent further averred that the Notice of Appeal on Record advanced two Grounds of Appeal and indicated that additional grounds would be advanced upon the perusal of the Judgment.

2.4 That notwithstanding the indication above, the Appellant seeks the Court's indulgence for an Order for Leave to amend the first Ground of Appeal by substituting Ground One with an entirely new ground as opposed to adding further Grounds of Appeal as per exhibit "**SM1**".

2.5 That this Application should be granted in the interest of justice more so that the Respondents will not be prejudiced in that they will be accorded an opportunity to respond to the amended ground in their respective Heads of Argument.

3.0 SKELETON ARGUMENTS IN SUPPORT

3.1 It was Counsel's submission that the Appellant's Application is anchored on **Order III Rule 2** of the **High Court Rules Chapter 27** of the **Laws of Zambia**.

3.2 **Order III Rule 2** of the **High Court Rules** provides:

"Subject to any particular rules, the Court or Judge may, in all causes and matters, make any Interlocutory

Order which it or he considers necessary for doing justice, whether such Order has been expressly asked by the person entitled to the benefit of the Order or not”.

3.3 It was Counsel’s submission that after a careful perusal of the Judgment, it was decided that Leave be sought to amend Ground One by substituting it with an entirely fresh ground as opposed to adding more grounds.

3.4 It was Counsel’s submission that no prejudice will be suffered by the Respondents as the Respondents will be given an opportunity to respond to the Appellant’s amended Ground of Appeal.

4.0 AFFIDAVIT IN OPPOSITION

4.1 The Affidavit in Opposition was sworn by Ignatius Makuamba, the 2nd Respondent in this Appeal and therefore competent to swear this Affidavit from facts within his personal knowledge and belief.

4.2 It was deposed by the Deponent that he has read the Appellant’s Affidavit in Support of Summons for Leave to amend Ground One of the Appeal as well as the Skeleton Arguments in Support of the Application. He averred that however, the said Application has been wrongly made pursuant to **Order III Rule 2** of the **High Court Rules** which does not apply to criminal matters.

- 4.3 The Deponent further deposed that he has been advised by his Advocates and verily believes that the Appellant has not properly invoked the jurisdiction of this Honourable Court.
- 4.4 The Deponent also averred that the Court's Record will show that the Appellant filed the Notice of Appeal on the 1st of October, 2024, but only filed the present Application for Leave to Amend Ground One on the 5th of March, 2025.
- 4.5 The Deponent avowed that the jurisdiction of this Court is time bound to a period of 5 months with extension of only a further 45 days at the discretion of the Court.
- 4.6 Further to the above, the Deponent averred that the Appellant has not made any Application for an extension of time.
- 4.7 Furthermore, that the initial Ground One and the proposed new Ground One of the Appeal both appear not to be materially different so as to warrant an Amendment at this late hour.

5.0 SKELETON ARGUMENTS IN OPPOSITION

- 5.1 It was Counsel's submissions that the Appellant's Application is incompetently before this Court because it was made pursuant to **Order III Rule 2** of the **High Court Rules Chapter 27** of the **Laws of Zambia**.

- 5.2 It was Counsel's submission that this Court is sitting as a Criminal Appellate Court to handle a Criminal Appeal from the Subordinate Court.
- 5.3 It was Counsel's submission that **Section 44 (1) (b)** of the **High Court Act Chapter 27** of the **Laws of Zambia** regulates how Civil Appeals are to be prosecuted but that Criminal Appeals are excluded under that Act.
- 5.4 It was Counsel's submission that since the High Court Rules do not apply to Criminal Appeals, **Order III Rule 2** of the **High Court Rules Chapter 27** of the **Laws of Zambia** does not apply, making the current Application incompetently before Court.
- 5.5 It was Counsel's submission that the Application is incompetent because the Court's jurisdictional timeframe lapsed and there has been no extension of time on Record.
- 5.6 It was Counsel's submission that on 1st October, 2024, the Appellant filed a Notice of Appeal out of Time against the Respondent's acquittal by the Lusaka Subordinate Court. The said Notice of Appeal was accompanied by the two Grounds of Appeal. Again, on the 5th of March, 2025, the Appellant filed the present Application to amend Ground One of the Appeal.

- 5.7 According to Counsel, the Application by the Appellant is ill-fated from inception in that it was made contrary to **Section 3 (1)** and **Section 3 (2)** of the **Criminal Procedure Code (Economic and Financial Crimes Court) Rules, Statutory Instrument No. 10 of 2024**.
- 5.8 It was Counsel's submission that the Appellant did not make any Application for the extension of time and neither is there any Order of Court on Record indicating that the Court had at its own instance, extended the jurisdictional time frame of 5 months. Therefore, there having been no extension of time, the Court's jurisdiction to hear the entire Appeal including the Appellant's present Application simply lapsed.
- 5.9 It was also Counsel's submission that the Appeal should be dismissed because the Appellant was indolent in that the Application was brought five months late.
- 5.10 In his final submission, Counsel submitted that the Application to substitute should not be granted because as shown by exhibit **"IM1"** and the proposed Amended Ground of Appeal, **"IM2"** are materially the same as such there is no need for an amendment.

6.0 THE HEARING

6.1 When the Matter came up for Hearing on the 5th of March, 2025, Counsel for the Appellant informed the Court that they intended to make an Application to substitute the first Ground of Appeal. The Court granted Leave to the Appellant to make the said Application and further ordered the said Application to be served on the Respondents.

7.0 ISSUES FOR DETERMINATION

7.1 As we see it, two issues emerge for determination.

- i. Whether the Application was properly before Court.*
- ii. Whether this Court has jurisdiction to hear this Application.*

8.0 ANALYSIS AND DECISION OF THE COURT

i. Whether the Application was properly before Court.

8.1 This Application was made pursuant to **Order 3 Rule 2** of the **High Court Rules, Chapter 27** of the **Laws of Zambia**.

8.2 In opposing the Application, Counsel for the Respondents argues that this Application was wrongly before this Court because it was made pursuant to a wrong provision of the law.

8.3 According to Counsel, **Order III rule 2** of the **High Court Rules** does not apply to Criminal Matters.

8.4 We have considered the rival submissions filed by the Parties.

8.5 From the onset, we state that as the Record shows, this is a Criminal Appeal. Implicit in this is that the procedure regarding how the Appeal should be made and prosecuted is pursuant to the **Criminal Procedure Code** as opposed to the **High Court Act**.

8.6 Our views above are in conformity with the provisions of **Section 44 (1) (b)** of the **High Court Act Chapter 27** of the **Laws of Zambia** which provides as follows:

“Rules of Court may be made by Statutory Instrument, under this Act for the following purposes:

(b) for regulatory and prescribing the procedure on appeals, other than criminal appeals, from any Court or Person to the Court, and the procedure in connection with the transfer of proceedings under this Act”.

(Emphasis ours)

8.7 As guided above, we agree with Counsel for the Respondents that this Matter was commenced pursuant to a wrong provision of the law. However, in spite of that, we shall proceed to hear the Application as we shall deem that it came before us pursuant to the correct provision of the law.

ii. Whether this Court has jurisdiction to hear this Application.

8.8 It was Counsel's submission that this Court has no jurisdiction to hear this Matter because the time frame for hearing this Appeal has lapsed.

8.9 We have considered the argument of Counsel.

8.10 We have to state that this Court is a Fast Track Court; therefore, both Trials and Appeals are time bound.

8.11 As regards Appeals, **Section 3 (1)** of the **Criminal Procedure Code (EFCC) Rules, Statutory Instrument No. 10 of 2024** is instructive. This Section provides:

“The Court shall, subject to this rule hear and determine a matter before the Court within five months from the date on which plea is taken or Appeal is filed”.

8.12 As guided by the above Section, a Matter before this Court should be determined within five months unless where there is an extension of time as provided for by **Section 3 (2)** as follows:

“Despite sub-rule (1), the Court may, where the Court considers it necessary, on Application by a Party or at the Court's instance, extend the period specified in sub rule (1) except that the extension granted by the Court shall not exceed forty-five days”.

8.13 Therefore in resolving the argument by Counsel for the Respondent, it is important to understand that the Appeal before

this Court was filed on the 1st of October, 2024, in line with **Section 3 (1) of the Criminal Procedure Code (Economic and Financial Crimes Court) Rule, Statutory Instrument No. 10 of 2024.**

8.14 By the filing dated 1st October, 2024, the Appeal was born and is alive until concluded. This in effect means that the Appeal can only be concluded when it is heard to its logical conclusion and not by effluxion of time. We are fortified by the guidance of the Supreme Court in *Citibank Zambia Limited Vs Dudhia*⁽¹⁾. Therefore, the argument that this Court is devoid of jurisdiction to handle this Appeal also lacks merit and is dismissed.

8.15 Having established that the Appeal is alive and kicking as of 1st October, 2024, there is no harm in the Appellant making an Application to substitute the Grounds of Appeal.

8.16 According to **Black's Law Dictionary, Tenth Edition** substitution means, "The process by which one person or thing takes the place of another person or thing".

8.17 Following that definition it is our considered view that the Appellant herein can make an Application to substitute the Grounds of Appeal. This is so because we are aware that in

making this Application the Appellant is not making any fresh Application. The Applicant is merely substituting a ground which was already in existence.

8.18 Coming to the second leg of the objection, which is that the Appellant should not be allowed to substitute Ground One merely because it is similar to Ground Two. We do not find any merit in this objection. In any case, it is the Court to make a finding as to whether the grounds are similar or otherwise. If they are similar the Court will determine them together.

8.19 In view of what we have said we find no merit in the objection raised by the Respondents. Accordingly, we grant Leave to the Appellant to substitute the Ground One of the Appeal within 7 days from the date of Judgment.

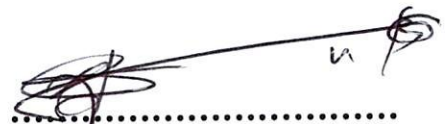
DELIVERED AT LUSAKA THIS 11TH DAY OF APRIL, 2025.



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A. MALATA-ONONUJU
HIGH COURT JUDGE



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I. M. MABBOLOBOLO
HIGH COURT JUDGE



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S. V. SILOKA
HIGH COURT JUDGE