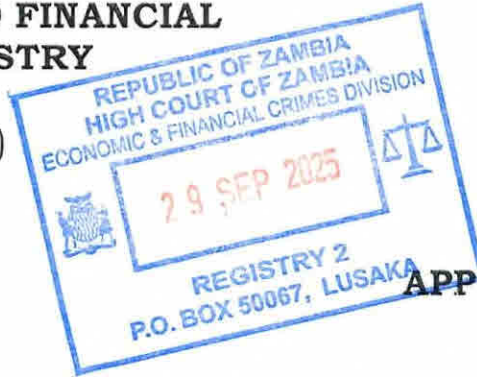


**IN THE HIGH COURT OF ZAMBIA  
AT THE ECONOMIC AND FINANCIAL  
CRIMES DIVISION REGISTRY  
HOLDEN AT LUSAKA  
(CRIMINAL JURISDICTION)**

**HPEF/07/2025**



**BETWEEN:**

**THE PEOPLE**

**AND**

**CHITALU CHILUFYA**

**KAKULUBELWA MULALELO**

**WILSON LUNGU**

**BONAVENTURE CHILINDE**

**ZAKIR HUSEN MOTALA**

**CHOMBA KAOMA**

**IMRAN LUNAT**

**ABDURRAUT ABDURRAHIM MOTOLA**

**HONEY BEE PHARMACY LIMITED**

**1<sup>ST</sup> RESPONDENT**

**2<sup>ND</sup> RESPONDENT**

**3<sup>RD</sup> RESPONDENT**

**4<sup>TH</sup> RESPONDENT**

**5<sup>TH</sup> RESPONDENT**

**6<sup>TH</sup> RESPONDENT**

**7<sup>TH</sup> RESPONDENT**

**8<sup>TH</sup> RESPONDENT**

**9<sup>TH</sup> RESPONDENT**

**BEFORE THE HONOURABLE JUSTICES S. M. WANJELANI, A.  
MALATA-ONONUJU AND S. V. SILOKA, ON THIS 29<sup>TH</sup> DAY OF  
SEPTEMBER, 2025.**

*For the Applicant: Mrs. Kennedy Mwanza – National Prosecution  
Authority*

*For the 1<sup>st</sup> Respondent: Mr. Boniface Chiwala – Messrs. Chiwala  
Boniface Legal Practitioners*

*For the 2<sup>nd</sup> Respondent: No Appearance*

*For the 3<sup>rd</sup> Respondent: Mr. G. K. Mwamba - Gill & Seph Advocates*

*For the 4<sup>th</sup> Respondent: No Appearance*

*For the 5<sup>th</sup> – 9<sup>th</sup> Respondents: Mr. Mwango – MAK Legal Partners*

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**RULING ON AN APPLICATION FOR LEAVE TO APPEAL OUT OF  
TIME**

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***Siloka S. V., J. delivered the Ruling of the Court.***

**CASES REFERRED TO:**

1. *The People Vs Ronald Kaoma Chitotela (HPEF/01/2022);*
2. *Anti-Corruption Vs Bowman Chilasha Lusambo (HPEF/02/2022);*
3. *Attorney General Vs Omar Dirie Hirsi (Applications 57 of 2020, 13 and 19 of 2021) unreported;*
4. *National Pensions Scheme Authority Vs Metraclarke (Zambia) Limited and Another (CAZ 880 of 2016) ZMCA 399;*
5. *Richard Sakala Vs Attorney General (2024/CCZ/0014);*
6. *Zambia Revenue Authority Vs Professional Insurance Corporation Zambia (Appeal No. 34 of 2017);*
7. *Savelino Zulu and Another Vs The People (Appeal No. 123, 124/2021);*
8. *Zakir Hussein Motala and 2 Others Vs The People (Appeal No. 10, 11, 12 of 2004);*
9. *Attorney General Vs Million Juma (1984) ZR 1;*
10. *Attorney General and Movement for Multiparty Democracy Vs Lewanika and Others (1993–1994) 2R 164;*
11. *Amuel Miyanda Vs Raymond Handahu (1994) S.J. 39;*
12. *Miyanda Vs The High Court (1985) Z.R. 62;*
13. *Crossland Mutinta and Another Vs Donovan Chipande (Selected Judgment No. 53 of 2018);*
14. *Antonio Ventriglia and Another Vs Finsbury Investment Limited (Appeal No. 2 of 2019);*
15. *Mubita Mwananuka Vs Armaguard Security Limited (Appeal No. 20/2021);*
16. *R Vs Askov (1990) 2 S.C.R. 1197;*
17. *Mwanza Vs The People (1967) ZR 138;*

18. *DPP Vs Mbugua & Others (2023) KECA 858 (KLR)*;
19. *The Republic Vs Nzioka (2025) KECA 288 (KLR)*;
20. *R Vs Sussex Justices, ex parte McCarthy (1924) 1 KB 256*;
21. *Chizombe Vs Edgar Chagwa Lungu and Others (2023/CCZ/0021)*;
22. *Mercantile Printers Vs Swiza Laboratories (Appeal No. 94 of 1996)*;
23. *Francis Muchemwa Vs The People (HPEF/2/2024)*;
24. *SW Water Authority (1985) 1 ALLER 513 at 516*;
25. *Andrew Kiplaget Chemaringo Paul Kipkorir Kibet (2018) ERLR*; and
26. *D. E. Nkhuwa Vs Lusaka Tyre Services Limited (1977) ZR 43*.

**LEGISLATION REFERRED TO:**

1. *Section 19 of the Criminal Procedure Code Chapter 88 of the Laws of Zambia; and*
2. *Section 324 of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia.*

**1.0 INTRODUCTION**

1.1 This is a Ruling in respect of an Application for Leave to Appeal out of Time. The Application was filed pursuant to **Section 324** of the **Criminal Procedure Code** and accompanied by an Affidavit in Support dated the 12<sup>th</sup> of June, 2025.

**2.0 THE APPLICANT'S AFFIDAVIT IN SUPPORT**

2.1 The Affidavit in Support was sworn by Victor Choongo, a State Advocate in the employ of the National Prosecution Authority, the Applicant herein.

2.2 The Deponent averred that on 19<sup>th</sup> January, 2021, criminal proceedings were instituted under **Section 19** of the **Criminal Procedure Code Chapter 88** of the **Laws of Zambia** in Cause

Number 2SPD/027/21 against the Respondents by way of a Complaint by Joseph Chirwa.

- 2.3 The Deponent added that though, the Complaint and Charge Sheet were filed, the same were filed without the Director of Public Prosecution's Consent to prosecute as per exhibits marked "**VC 1a-b**".
- 2.4 That on the same day, the 19<sup>th</sup> of January, 2021, the Complainant filed a Notice of Withdraw of the Complaint into Court as per exhibit marked "**VC-2**".
- 2.5 Following the filing of a Notice to Withdraw all the Respondents were acquitted by Honourable Chinunda Chiwaula on the 26<sup>th</sup> of January, 2021, as per the Ruling exhibited as "**VC-3**".
- 2.6 The Deponent further deposed that on 23<sup>rd</sup> August, 2022, the Respondents appeared for Plea in Cause No. CRMPC/002/2022 before Honourable Chibwili after they were charged for a similar offence by the Anti-Corruption Commission but raised a Plea of *Autrefois* Acquittal.
- 2.7 That in the light of the above, the Trial Court conducted a trial in accordance with the law to ascertain whether such plea is true in fact or not.
- 2.8 The Deponent further averred that after trial, the Court found the Plea of *Autrefois* Acquittal to be false in fact, hence ordered the Respondents to plead to the Charge.
- 2.9 Following the Court's Order, the Respondents raised constitutional issues and applied that all Proceedings in the Subordinate Court be stayed pending hearing and determination by the High Court.

- 2.10 He stated that on 10<sup>th</sup> October, 2022, the Subordinate Court delivered a Ruling referring the matter to the High Court and stayed all Proceedings pending hearing and determination of the constitutional issues raised.
- 2.11 The Deponent further deposed that on 7<sup>th</sup> of October, 2022, Wilson Lungu, one of the Respondents appeared before the Economic and Financial Crimes Court at the High Court in Cause No. HPEF/03/2022 for the determination of the constitutional issues raised in the Subordinate Court.
- 2.12 Further, the Deponent averred that on 24<sup>th</sup> July, 2023, Zakir Hussein Motola, Imran Lunat and Abdurrahim Motola appeared before the Honourable Justice G. Milimo-Salasini in Cause No. HPA/4/2023 for hearing of the Appeal against the Subordinate Court's Order that the Respondents retake Plea.
- 2.13 The Deponent vied that on 31<sup>st</sup> October, 2022, the Economic and Financial Crimes Court in Cause No. HPEF/03/2022 ruled that proceedings under Cause No. 2SPD/027/2021 against Wilson Lungu were irregular and that the consequent Order of acquittal by the Subordinate Court was null and void, as per exhibit **"VC-4"**.
- 2.14 That on 12<sup>th</sup> January, 2024, the Honourable Justice G. Milimo-Salasini in Cause No. HPA/14/2023 held in her Judgment that the Subordinate Court under Cause No. 2SPD/027/2021 had no jurisdiction to acquit Zakir Hussein Motola, Imran Lunat and Abdurrahim Motola as per exhibit marked **"VC-5"**.
- 2.15 Being dissatisfied with the Court's Judgement, the Deponent stated the Respondents appealed to the Court of Appeal.

- 2.16 According to the Deponent on 31<sup>st</sup> August, 2023, the Court of Appeal under Appeal No. 51/2023 ruled in the Wilson Lungu matter that the High Court can exercise its revisionary jurisdiction under the **Criminal Procedure Code Chapter 88** of the **Laws of Zambia**, where any other order had been made by the Subordinate Court, except an order of acquittal, as per exhibit marked “**VC-6**”.
- 2.17 It was further deposed by the Deponent that on 19<sup>th</sup> November, 2024, the Court of Appeal sitting in Ndola heard the last appeal by the Respondent and reserved Judgment.
- 2.18 In its Judgment, the Court of Appeal in Appeal No. 10, 11, 12, 2024 set aside the Order of the High Court for retrial and further guided that Zakir Husen Motola, Imran Lunat and Abdurrahim Motola’s Acquittal can only be set aside where the Director of Public Prosecutions has exercised his right of Appeal under **Section 321A** of the **Criminal Procedure Code Chapter 88** of the **Laws of Zambia**, as per exhibit marked “**VC-7**”.
- 2.19 That the latest Judgment of the Court of Appeal delivered on 19<sup>th</sup> November, 2024 was only served on the Applicant in the month of January, 2025.
- 2.20 The Deponent also stated that immediately the said Judgment was received, the Applicant caused to be filed a Notice of Appeal against the Acquittal and an Application for Leave to Appeal out of Time on 6<sup>th</sup> February, 2025, as per exhibit “**VC-8**”.
- 2.21 It was further averred by the Deponent that the delay in filing the Notice of Appeal by the Director of Public Prosecutions was not deliberate but was occasioned by the Respondents Wilson Lungu, Zakir Husen Motola, Imran Lunat and Abdurrahim Motola’s filing

of multiple actions in the High Court and the Court of Appeal which took long to be heard.

2.22 That it was upon the conclusion of the Respondents' Appeals and guidance from the Court of Appeal that the Director of Public Prosecutions now appeals to this Honourable Court.

2.23 The Deponent further deposed that the Application to Appeal out of time should be allowed because it has high prospects of success; it is in the interest of justice and that it will not prejudice the Respondents.

### **3.0 APPLICANT'S SKELETON ARGUMENTS IN SUPPORT**

3.1 In support of the Application, Counsel submitted that the Application is made pursuant to **Section 321, 321A, 322 and 324** of the **Criminal Procedure Code** (herein after called the CPC), which form an interconnected framework, which gives this Court power to hear and determine appeals out of time.

3.2 In affirming the mode of commencement of this Application, Counsel drew the attention of the Court to our decisions in ***The People Vs Ronald Kaoma Chitotela***<sup>(1)</sup> and that of ***Anti-Corruption Commission Vs Bowman Chilasha Lusambo***<sup>(2)</sup> where this Court granted Leave and set out the procedure of appealing out of time.

3.3 Further, Counsel referred the Court to the case of ***Attorney General Vs Omar Dirie Hirsi***<sup>(3)</sup>, where the Court of Appeal in interpreting **Order XIII (1) (a)** of the **Court of Appeal Rules** held, *inter alia*, that:

***“Clearly the Court’s discretion in an application for extension of time is informed by sufficient reason. The***

***Applicant must therefore, give reasons for the failure to make the application within the prescribed time. Therefore, it is for the Court to evaluate the reasons given and decide whether the applicant complied with the rules and is excusable to warrant the grant of an extension.”***

3.4 It was also Counsel’s submission that the Applicant’s Application to appeal out of time accompanied by the Notice of Appeal and Affidavit in Support should be allowed because it has furnished sufficient reasons for the delay.

#### **4.0 AFFIDAVIT IN OPPOSITION BY THE 1<sup>ST</sup> RESPONDENT**

4.1 The Affidavit in Opposition was sworn by Peter Njungu, Counsel seized with conduct of this Matter, on behalf of the 1<sup>st</sup> Respondent.

4.2 It was deposed by the Deponent that the reason furnished by the Applicant in support of this Application, does not amount to material circumstance upon which this Court should allow an appeal out of time.

4.3 That the Application is misplaced because an appeal out of time requires the Applicant to show the reason for appealing out of time and not to demonstrate the likelihood of success.

4.4 The Deponent further deposed that the delay to appeal out of time is one of the factors this Court should take into consideration but that in *casu*, the period of 4 years was not only inordinate but unreasonable.

#### **5.0 AFFIDAVIT IN OPPOSITION BY THE 3<sup>RD</sup> RESPONDENT**

5.1 The Affidavit was sworn by Wilson Lungu, the 3<sup>rd</sup> Respondent in these Proceedings who deposed that he personally appeared before

Principal Resident Magistrate J. Bwalya under Cause Number SSPD/015/2022 charged with the offence of willful failure to follow applicable law or procedure or guidelines contrary to **Section 34 (2)(b)** of the **Anti-Corruption Act, 2012** and not before Honourable Chibwili under Cause Number CRMPC/002/2022, as per exhibit **“VC4”**.

- 5.2 He stated that the Court will note from exhibit **“VC5”** in the Applicant’s Affidavit in Support of the Application for Leave to File a Notice of Appeal out of Time that only the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents appeared before Honourable Chibwili under Cause Number CRMPC/002/2022 facing a charge of uttering a false document contrary to **Sections 352** and **347** of the **Penal Code**.
- 5.3 In his further deposition, the Deponent asserted that before plea could be taken under Cause Number SSPD/015/2022, he caused to be raised an objection to the Charge on account that he had previously been charged with and acquitted of the same offence under Cause Number 25PD/027/21 and therefore could not face the same charge.
- 5.4 He added that on its part, the Applicant challenged the legality of the Acquittal on account that it was allegedly characterized with a number of irregularities.
- 5.5 Following the challenge, the Principle Resident Magistrate J. Bwalya as per Exhibit **“VC4”** ruled that she did not have jurisdiction to review the decision of her fellow Magistrate hence referred the question of the legality or otherwise of the Acquittal under Cause Number 2SPD/027/21 to the High Court.

- 5.6 That as Exhibit “**VC4**” in the Applicant’s Affidavit in Support of the Application for Leave to file a Notice of Appeal out of Time will show, on 31<sup>st</sup> day of October, 2022, the High Court delivered its Ruling wherein the legality or otherwise of the Acquittal under Cause Number 2SPD/027/21 was considered resulting into the annulment of the said Acquittal.
- 5.7 Dissatisfied with the Ruling of the High Court referred to above, the Deponent appealed to the Court of Appeal.
- 5.8 It was further deposed by the Deponent that as Exhibit “**VC6**” in the Applicant’s Affidavit in Support of the Application for Leave to file a Notice of Appeal out of Time shows, on 31<sup>st</sup> August, 2023, the Court of Appeal set aside the Ruling of this Court which annulled the acquittal.
- 5.9 According to the Deponent, the Applicant having failed to secure the reversal and or annulment of acquittal through a review is now attempting to have the acquittal set aside for the second time.
- 5.10 That he has been advised by his Advocates and verily believes the same to be true and correct that the said **Section 321A** of the **CPC** prescribes a period of fourteen (14) days of the decision of the Subordinate Court as being the time frame within which the DPP may appeal. Therefore, the period of more than four (4) years is inordinate.
- 5.11 The Deponent further denied that the delay by the DPP in filing the Notice of Appeal was due to his filing of multiple actions in the High Court and Court of Appeal.
- 5.12 It was also deposed by the Deponent that contrary to the Applicant’s allegation that he filed multiple actions in the High

Court, exhibit “VC4” in the Applicant’s Affidavit in Support of the application for leave to file a Notice of Appeal out of Time will show that the matter under Cause SSPD/015/2022 was referred to the High Court for review at the instance of the Applicant.

- 5.13 The Deponent further deposed that he was within his right to appeal to the Court of Appeal and that the alleged multiplicity of actions was caused by the Applicant who decided to arraign the Respondents who had earlier been acquitted under Cause Number 2SPD/027/21.
- 5.14 That despite being aware of the guidance of the Court of Appeal given in the year 2023 as per exhibit “VC6”, the Applicant chose to do nothing about the Matter until this year.
- 5.15 The Deponent further testified that there is no law which prevented the Applicant from filing a Notice of Appeal after the Judgment of the Court of Appeal in the year 2023.
- 5.16 The Deponent further averred that granting the Applicant Leave to Appeal out of Time will seriously prejudice the Respondents in that witnesses may not accurately recount the facts relating to this Matter, which will have a bearing on delivery of Justice.
- 5.17 The Deponent further deposed that this Court has no jurisdiction to entertain this Application because **Section 324 (1)** of the **Criminal Procedure Code** only mentions Section three hundred and twenty-two (**322**) and NOT **Section 321A**.
- 5.18 As consequence of the above omission, the Deponent asserted that this Honourable Court has no jurisdiction to extend time within which to appeal under **Section 321A** of the **CPC** where time has expired.

## **6.0 AFFIDAVIT IN OPPOSITION BY THE 4<sup>TH</sup> RESPONDENT**

6.1 The Affidavit in Opposition was sworn by Zakir Husen Motola, 4<sup>th</sup> Respondent on his own behalf and on behalf of the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents.

6.2 The Deponent's averments essentially rehashed the contents of the Affidavit in Opposition deposed to by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents and will not be repeated here save to add that he contended that the Application should not be granted because the delay was inordinate, will prejudice the Respondents and that it will not be in the interest of justice to allow the Applicant to appeal after 4 years.

## **7.0 ARGUMENTS IN OPPOSITION BY THE 1<sup>ST</sup> RESPONDENT**

7.1 It was Counsel's submission that the Application by the Applicant should not be entertained because it was not brought within a reasonable time and has suffered inordinate delays. Counsel drew the attention of the Court to the case of **National Pensions Scheme Authority Vs Metraclarke (Zambia) Limited and Another**<sup>(4)</sup>, where the Court of Appeal clearly pointed out that failure to take action within the prescribed time constitutes an inordinate delay, is inexcusable and fatal.

7.2 According to Counsel, the explanation given by the Applicant for the delay in filing the Appeal is no reason for the delay at all, but shows a cavalier attitude towards the Matter.

7.3 It was also Counsel's submission that allowing this Application will prejudice the Respondents. Counsel referred the Court to the case of **Richard Sakala Vs Attorney General**<sup>(5)</sup>, where the Court underscored the importance of Appealing within time to avoid prejudicing the Respondents.

## 8.0 3<sup>RD</sup> RESPONDENT'S ARGUMENTS IN OPPOSITION

- 8.1 It was Counsel's submission that in terms of **Section 324 (1)** of the **Criminal Procedure Code**, where time has expired, the High Court has jurisdiction to extend time within which to appeal.
- 8.2 Submitting further, Counsel stated that before this Court can begin to engage in anything resembling the exercise of its appellate jurisdiction, it is important that this Honourable Court satisfies itself that it is clothed with the requisite jurisdiction to extend time within which to appeal. Counsel drew our attention to the case of *Zambia Revenue Authority Vs Professional Insurance Corporation Zambia*<sup>(6)</sup> for the proposition that jurisdiction must be acquired before the Court makes any Orders.
- 8.3 It was Counsel's submission that pursuant to **Section 321A (1)** of the **Criminal Procedure Code**, the Court of Appeal in the case of *Savelino Zulu and Another Vs The People*<sup>(7)</sup> and the case of *Zakir Husen Motala and 2 Others Vs The People*<sup>(8)</sup> guided that where the DPP is dissatisfied with a Judgment of a Subordinate Court on a point of law or fact, he may appeal against any such Judgment to the High Court within 14 days.
- 8.4 According to Counsel, what is clear from the Authorities cited above is that the DPP's right to appeal is provided for under **Section 321A** of the **Criminal Procedure Code** but must be exercised within fourteen (14) days.
- 8.5 In consequence thereof, Counsel submitted that the DPP cannot appeal against the decision that was made on 26<sup>th</sup> January, 2021, a period of more than four (4) years.

- 8.6 Counsel further argued that using the literal interpretation where words are given their natural and ordinary meaning (see the cases of *Attorney General Vs Million Juma*<sup>(9)</sup> and *Attorney General and Movement for Multi-Party Democracy Vs Lewanika and Others*<sup>(10)</sup>, the Court, under **Section 324(1) and (2)** as read together with **Section 321A** of the **Criminal Procedure Code**, has no jurisdiction to extend time where the period of appeal has lapsed.
- 8.7 According to Counsel, it is significant to note that **Section 324 (1)** of the **Criminal Procedure Code** only mentions **Section 322** but excludes **Section 321A** in terms of the High Courts' power to extend time where the period of Appeal has lapsed.
- 8.8 It was Counsel's submission that the fact that **Section 321A** is not mentioned in **Section 324** of the **Criminal Procedure Code** means that it has been excluded, implying that the High Court has no jurisdiction to extend time where the 14 days has expired. Counsel drew the Court's attention to the case of *Amuel Miyanda Vs Raymond Handahu*<sup>(11)</sup>, where it was stated as follows:

*“For our part, we would not overlook maxims like ‘expressio unius est exclusio alterius’ which would mean the express mention of a thing excludes things which are not mentioned, that is in our case, the express stipulation of those that are disqualified or to be disqualified under a law excludes a law not expressly so stipulated.”*

- 8.9 According to Counsel, given that the Court has been invited to enlarge time within which to appeal under **Section 321A** of the **Criminal Procedure Code**, a matter or area over which this Court

does not have jurisdiction. This Court as guided in *Miyanda Vs The High Court*<sup>(12)</sup>, *Crossland Mutinta and Another Vs Donovan Chipande*<sup>(13)</sup> and *Antonio Ventriglia and Another Vs Finsbury Investment Limited*<sup>(14)</sup> cannot clothe itself with jurisdiction, it does not possess, hence it must decline the illegal invitation to enlarge time.

- 8.10 Counsel further extended his argument by submitting that **Section 321A** of the **CPC** is an amendment which came long after **Section 324 (1)** had already been enacted and that is why **Section 324 (1)** does not make reference to **Section 321A** because the provision did not exist at the time when **Section 324 (1)** was being enacted.
- 8.11 According to Counsel, the argument by the Applicant that **Section 324 (1)** contemplates **Section 321A** is illogical because the legislature could not have made a reference to a Section which never existed.
- 8.12 Counsel further submitted that the holding in *The People Vs Ronald Kaoma Chitotela*<sup>(1)</sup> and *Anti-Corruption Commission Vs Bowman Chilasha Lusambo*<sup>(2)</sup> does not apply because in both, the question whether in terms of **Section 324 (1)** of the **Criminal Procedure Code** the High Court has jurisdiction to extend time within which to appeal under **Section 321A** of the **Criminal Procedure Code** where time has expired, was neither raised nor interrogated.
- 8.13 Further, Counsel submitted that the two cases were wrongly decided because the Court proceeded on a popular but erroneous assumption that this Court has jurisdiction to extend time within

which to appeal where the period within which to appeal under **Section 321A** of the **Criminal Procedure Code** has expired.

- 8.14 According to Counsel, the scope of jurisdiction conferred on the High Court under **Section 324** of the **Criminal Procedure Code** to enlarge time within which to appeal is limited to **Section 322** of the **Criminal Procedure Code**. This is as guided by the Supreme Court of Zambia in the case of *Amuel Miyanda Vs Raymond Handahu*<sup>(11)</sup> *supra*, in that **Section 324** of the **Criminal Procedure Code** has excluded **Section 321A** by not mentioning it.
- 8.15 In view of the alleged erroneous decision in the above cases, Counsel urged us to adopt the guidance in *Mubita Mwananuka Vs Armaguard Security Limited*<sup>(15)</sup> for the proposition that a court can vacate its previous decision if it was wrongly decided.
- 8.16 It was Counsel's submission that granting the Applicant Leave to Appeal out of Time will seriously prejudice the Respondents, in the sense that if the Acquittal is disturbed on appeal and a trial ordered to proceed, a delay of more than four (4) years is likely to negatively affect the delivery of justice as witnesses may not accurately recount the facts relating to the Matter.
- 8.17 It was Counsel's submission that the dangers associated with delays such as this one, were aptly summarized by the Supreme Court of Canada in the case of *R Vs Askov*<sup>(16)</sup> where the Court opined as follows:

***“There are as well important practical benefits which flow from a quick resolution of the charges. There can be no doubt that memories fade with time. Witnesses are likely to be more reliable testifying to events in the***

*immediate past as opposed to events that transpired many months or even years before trial. Not only is there an erosion of the witnesses' memory with passage of time, but there is bound to be an erosion of the witnesses themselves. Witnesses are people; they are moved out of the country by their employer; or for reasons related to family or work; they move from east coast to west coast; they become sick and unable to testify in Court; they are involved in debilitating accidents; they die and their testimony is forever lost."*

8.18 It was Counsel's submission that it was precisely because of the challenges highlighted above that the legislative drafters enacted **Article 18 (1)** of the **Constitution of Zambia** which provides as follows:

*"If any person is charged with a criminal offence, then unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."*

8.19 It was Counsel's submission that **Article 18 (1)** quoted above requires that a hearing be conducted within a reasonable time. This is because a just and fair determination can only be attained if a matter is tried while the facts are still within the recollection of the witness.

8.20 It was Counsel's submission that the delay of over four years in this matter is indeed inordinate and will seriously prejudice the Respondents.

## **9.0 6<sup>TH</sup>, 7<sup>TH</sup>, 8<sup>TH</sup> AND 9<sup>TH</sup> RESPONDENTS' ARGUMENTS IN OPPOSITION**

- 9.1 The submissions by the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents are similar to those of the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents and will not be repeated here save to add that Counsel submitted that the delay referred to by the Applicant could not be attributed to the Respondents because **Sections 216** and **217** of the **CPC** permitted them to raise a Plea in bar, that the Applicant deliberately sat on his own right to appeal and by implication lost that right.
- 9.2 Counsel referred the Court to the case of *Mwanza Vs The People*<sup>(17)</sup> for the proposition that an Appellant who has failed to appeal within the time prescribed should be recorded as having lost his appeal, that the Applicant has not acted equitably to be entitled to an extension of time.
- 9.3 Counsel referred the Court to the cases of *DPP Vs Mbugua and Others*<sup>(18)</sup> and the *Republic Vs Nzioka*<sup>(19)</sup> for the proposition that extension of time is an equitable remedy to be enjoyed only by deserving Applicants who act equitably. It was contended that granting the Applicant Leave after four years would amount to an injustice.
- 9.4 Counsel also referred the Court to the case of *R Vs Sussex Justices*<sup>(20)</sup> for the proposition that justice should not only be done but must be seen to be done, which proposition was also adopted in the case of *Michelo Chizombe Vs Edgar Chagwa Lungu and Others*<sup>(21)</sup> and that of *Mercantile Printers Vs Swiza Laboratories*<sup>(22)</sup>.

## **10.0 THE APPLICANT'S AFFIDAVIT IN REPLY**

10.1 The Affidavit in Reply was sworn by Victor Choongo, a State Advocate in the employ of the National Prosecution Authority, the Applicant, who, briefly averred that the Applicant herein has adduced sufficient reasons why the Appeal could not be made within 14 days, reason being that there were pending Applications before Courts.

## **11.0 THE HEARING**

11.1 When the Matter came up for hearing on 3<sup>rd</sup> of July, 2024, Mrs. Kennedy Mwanza informed the Court that the Applicant would rely on the Affidavit and Skeleton Arguments in Support filed on 12<sup>th</sup> June, 2025, save to briefly augment that the Application is properly before Court pursuant to **Section 324** of the **Criminal Procedure Code** which confers this Court with powers to enlarge time.

11.2 She added that the Applicant has provided sufficient reasons to trigger this Court's discretion to grant this Application. Further, that **Article 118 (2)(b)** of the **Amended Constitution Act No. 2 of 2016** enjoins Courts dealing with both civil and criminal matters to administer justice without procedural technicalities. That the grant of this Application will not cause the Respondents to suffer any prejudice because the Application is purely on a point of law.

11.3 In opposition, Mr. Mwamba on behalf of the Respondents, informed the Court that he would rely on the Affidavit and Skeleton Arguments in Opposition and augmented briefly that in his reading of **Section 324** of the **CPC**, the High Court is conferred with power to enlarge time by **Section 322** of the **CPC** but cannot rely on

**Section 321 (A)** of the **CPC**, because it has been excluded by **Section 324**.

- 11.4 According to Counsel, the implication of not mentioning **Section 321(1) (A)** and only mentioning **Section 322** in **Section 324** is that **Section 321 (1) (A)** is excluded as guided in *Miyanda Vs Handahu*<sup>(11)</sup>, where it was held that when a thing has not been mentioned, it means that it has been excluded.
- 11.5 Counsel further urged the Court to take Judicial Notice that the two Sections are not only distinct but that they were also enacted at two different times, and that **Section 321 (A)** is an Amendment which was introduced long after **Section 324** was already enacted.
- 11.6 It was Counsel's submission that it cannot possibly be argued that reference to **Section 321** and **Section 322** includes reference to **Section 321 (A)** which was not yet enacted at the time of enacting **Section 322**.
- 11.7 According to Counsel, even assuming that this Court has discretion to enlarge time in **Section 321 (A)**, the Applicant has not furnished this Court with reasons why the appeal against the decision was not made in January, 2021, when the Respondents were acquitted.
- 11.8 It was Counsel's submission that in the absence of an explanation as to why an appeal was not mounted within 14 days from the 31<sup>st</sup> of January, 2021, there is no basis on which this Court will exercise the power to enlarge time.
- 11.9 As regards **Article 118** of **the Constitution** Counsel submitted that **Article 118** is not a dumping ground for non-compliance of statutory provisions. According to Counsel what confronts the Court is not a procedural issue but a substantive issue, sitting in a

statutory provision, therefore **Article 118** is of no help to the Applicant.

- 11.10 Mr. Mwangi on behalf of the 5<sup>th</sup> – 7<sup>th</sup> Respondents informed the Court that he would rely on the Affidavit and Skeleton Arguments filed in Opposition on 25<sup>th</sup> June, 2025, and augmented briefly that as guided in the recent Judgment in the case of **Francis Muchemwa Vs The People**<sup>(23)</sup>, procedural rules and statutory provisions should be strictly adhered to and parties should not disregard them willy nilly and that Courts ought not to allow individuals to disregard rules of Court anyhow as this will result in anarchy.
- 11.11 It was Counsel's submission that **Section 321 (A)** of the **CPC** is couched in mandatory terms and this Court ought not to allow the Applicant to disregard the said provision as doing so would result in anarchy.
- 11.12 It was Counsel's submission that the Applicant has not provided this Court with a good reason for delaying to file the Appeal as the explanation given merely shifts the blame on the Respondent.
- 11.13 According to Counsel, the proceedings in the High Court and the Court of Appeal were as a consequence of the Applicant having commenced fresh proceedings as opposed to filing an Appeal.
- 11.14 As regards **Article 118** of the **Constitution**, Counsel submitted that this Court in the case of **Francis Muchemwa**<sup>(23)</sup> stated that **Article 118** should not be used by parties to disregard procedural rules and statutory provisions.
- 11.15 In reply, Mrs. K. Mwanza, Counsel for the Applicant submitted that **Sections 321 (A), 322** and **324** of the **CPC** form an interconnected framework in their Application and effect.

- 11.16 On the issue of not filing the Appeal within 14 days, Counsel submitted that the Affidavit shows that the withdrawal of the Complaint culminated into a series of events, key in these events is the Plea of the *Autrefois Acquit*, raised before Hon. Chibwili on the 23<sup>rd</sup> of August, 2022, over a year after the Notice of Withdrawal was filed into Court.
- 11.17 It was Counsel's submission that, the Affidavit highlights a series of events which include multiple Applications, Rulings and Judgments from the two Courts. The two High Court Judgments dealt with the Acquittal, which Judgments could not take effect as the Respondents filed separate Appeals. According to Counsel it was only after the guidance of the Court of Appeal, that the Applicant was guided that the Judgments of the High Court would not take effect and most importantly that the Acquittal by the Subordinate Court would stand.
- 11.18 Further Counsel submitted that to expect the Applicant to file an Appeal before the conclusion of these matters would have amounted to forum shopping.
- 11.19 On the issue of **Article 118** vis-a-vis **Francis Muchemwa**<sup>(23)</sup> Counsel submitted that the **Muchemwa**<sup>(23)</sup> case is distinguishable in that the Applicant did not sit back in total disregard of procedure but as the Record shows there was a sequence of events and multiple Applications filed before Court.

## **12.0 ISSUES FOR DETERMINATION**

12.1 The following issues have been framed for determination:

- i. Whether the Application is properly before Court;***

- ii. *Whether in terms of Section 321(1) of the Criminal Procedure Code, the High Court has jurisdiction to extend time where the period within which to appeal under Section 321A (1) of the Criminal Procedure Code has expired;*
- iii. *Whether the Applicant has advanced sufficient reasons to persuade this Court to grant Leave for the extension of time; and*
- iv. *Whether the Respondents will be prejudiced if this Court grants the Application for Leave to file a Notice of Appeal out of Time.*

### **13.0 CONSIDERATION AND DECISION OF THIS COURT**

13.1 We have carefully considered the Application, Affidavit evidence and Skeleton Arguments for and against the Application. We are greatly indebted to Counsel for the spirited arguments.

13.2 The issues identified in 12.1 shall be addressed seriatim.

#### ***(i) Whether the Application is properly before Court?***

13.3 It was submitted by Counsel for the Applicant that this Application was properly before Court because it was made pursuant to **Section 324(1) of the Criminal Procedure Code, Chapter 88** of the **Laws of Zambia**.

13.4 Further, Counsel submitted that this Court allowed a similar Application in the case of *Anti-Corruption Vs Bowman Chilasha Lusambo*<sup>(2)</sup> and the case of *The People Vs Ronald Kaoma Chitotela*<sup>(1)</sup> wherein the Court ably guided the procedure to be adopted in applications such as the one before Court.

- 13.5 Counsel for the 3<sup>rd</sup> Respondent counter argued that this Application was wrongly before Court. According to Counsel, the Applicant is precluded from appealing out of time where the 14 days has elapsed.
- 13.6 It was Counsel's argument that our decision in the case of **Anti-Corruption Commission Vs Bowman Chilasha Lusambo**<sup>(2)</sup> and the case of **The People Vs Ronald Kaoma Chitotela**<sup>(1)</sup> was wrongly decided and that we should vacate that decision as guided in the case of **Mubita Mwananuka Vs Amaguard Security Limited supra**<sup>(15)</sup>.
- 13.7 We have considered the arguments of all Parties.
- 13.8 In resolving this argument, we shall first start by examining **Part XI** of the **Criminal Procedure Code, Chapter 88** of the **Laws of Zambia**. We do so, because this is the legal framework that guides Appeals in our criminal jurisdiction and its heading specifically states "Appeals".
- 13.9 This legal framework consists of **Sections 321, 321A, 322, 323** and **324**.
- 13.10 **Section 321** deals with appeals generally, on both law, fact and conviction while **Section 321A** deals with Appeals by the DPP on point of law and prescribes the time frame within which such appeals shall be made. **Section 322** provides for limitation of when Appeals shall be made, **Sections 323** and **324** provide for the procedure for Appeals.
- 13.11 In our reading of the above Sections, the guidance we draw is that **Section 321** of the **Criminal Procedure Code** allows any person to appeal against any sentence or conviction. On the other hand,

**Section 321A** exclusively gives powers to the Director of Public Prosecutions to Appeal on point of law but puts a time frame when such appeals can be made. As can be noted **Section 321A** expressly gives the DPP the right to challenge a decision of a Subordinate Court when dissatisfied with that decision. Further under this provision of law, the Grounds of Appeal are limited. The DPP may only appeal if the Judgment is:

*a) Erroneous in point of law – meaning that the trial Court misapplied or misunderstood the law in reaching its decision; or*

*b) In excess of jurisdiction – meaning the Subordinate Court acted outside or beyond the powers conferred upon it by law.*

13.12 This shows that the appeal by the DPP is not open-ended or based on mere dissatisfaction with findings of fact. It is strictly confined to legal and jurisdictional errors. In exercising the right of Appeal, the DPP must appeal within 14 days, where the 14 days has expired, the DPP must comply with **Sections 323** and **324** of **the Criminal Procedure Code**.

13.13 Having analyzed the above Sections in light of the argument before us, our considered view is that the Application made by the DPP is correctly before us in that the DPP anchored his Application on correct provisions of the law and also followed the correct procedure of applying for Leave to Appeal out of Time. We say so because the DPP pursuant to **Section 324(1)** is allowed to file an appeal out of time where the 14 days has lapsed, upon applying and being granted Leave to do so.

13.14 As we have stated above, we are aware that Counsel for the 3<sup>rd</sup> Respondent vehemently urged us to vacate our decision in the case of **Anti-Corruption Commission Vs Bowman Chilasha Lusambo**<sup>(2)</sup> and the case of **The People Vs Ronald Kaoma Chitotela**<sup>(1)</sup> for being wrongly decided in line with the guidance given by the Court of Appeal in **Mubita Mwananuka Vs Armaguard Security Limited supra**<sup>(15)</sup>. Our firm view is that our decision in the two impugned Judgments was sound and the call for us to vacate our decision in the two cases is dismissed for want of merit. Although in the two cases referred to, the question of extension of time under Section 324(1) and 321A did not arise, the Court was on firm ground to hold that the High Court has jurisdiction to extend time within which to appeal where the period of Appeal has lapsed.

***ii. Whether in terms of Section 324 (1) of the Criminal Procedure Code, the High Court has jurisdiction to extend time within which to appeal under Section 321A (1) of the CPC has expired?***

13.15 Under this argument, Counsel for the Applicant submitted that this Court should proceed to determine this Application as it has the requisite jurisdiction to hear such an Application.

13.16 According to Counsel, the Application in *casu* has been made in compliance with **Sections 321A, 322 and 324** of the **Criminal Procedure Code**, which is the interconnected legal framework regulating Appeals.

13.17 In his counter argument, Counsel for the 3<sup>rd</sup> Respondent submitted that this Court has no jurisdiction to entertain this

Application because **Sections 321A, 322 and 324** of the **Criminal Procedure Code** do not form an interconnected legal frame work.

13.18 According to Counsel, this is so because **Section 321A** is not mentioned in **Section 324** of the **Criminal Procedure Code**, which means that it has been excluded, denying this Court any jurisdiction to entertain the Application prayed for as guided in the case of *Miyanda*<sup>(11)</sup> *supra*.

13.19 Further, that the said Sections cannot be an interconnected frame work because **Section 321A** is an amendment which came long after **Section 324 (1)** had already been enacted, hence the exclusion.

13.20 To address this question adequately, we have decided to break the question into sub questions namely:

***(i) Whether Sections 321, 322 and 321A forms the legal framework regulating Appeals;***

***(ii) Whether by virtue of not mentioning Section 321A in Section 324, Section 321A has been excluded; and***

***(iii) Whether the Amended Section 324 (1) contemplates Section 321A of the CPC.***

13.21 We shall answer the sub questions *seriatim*.

***(i) Whether Sections 321, 322 and 321A forms the Legal Frame Work regulating Appeals.***

13.22 As we earlier on stated in Paragraph 13.7 our considered view is that **Sections 321, 322 and 321A** forms the basis of the legal framework of Criminal Appeals.

13.23 The Applicant having complied with the said provisions entails that this Application is correctly before us. This in turn clothes us with

sufficient jurisdiction to hear this Application in line with the guidance laid down in Miyanda Vs The High Court<sup>(12)</sup>, Crossland Mutinta and Another Vs Donovan Chipende<sup>(13)</sup> and Antonio Ventriglia and Another Vs Finsbury Investment Limited<sup>(14)</sup> for the proposition that jurisdiction must be acquired by the Court before any Order is issued, and that any Order issued without jurisdiction is a nullity.

***(ii) Whether by virtue of not mentioning Section 321A in Section 324, Section 321A has been excluded; therefore, denying this Court jurisdiction to handle this Application.***

13.24 Under this argument Counsel for the 3<sup>rd</sup> Respondent urged us to decline the Application because the High Court has no jurisdiction to extend time under **Section 321A** because the said Section has not been mentioned in **Section 324(1)**.

13.25 To buttress his argument, Counsel for the 3<sup>rd</sup> Respondent urged us to attach the literal interpretation to **Section 324(1)** of the **Criminal Procedure Code** as guided in the case of Attorney General Vs Million Juma<sup>(9)</sup> and the case of Attorney General and Movement of Multi-Party Democracy Vs Lewanika<sup>(10)</sup> for the proposition that if words of the Statute are precise and unambiguous, then no more can be necessary than to expound these words in their ordinary and natural meaning.

13.26 In response, Counsel for the Applicant urged us to allow the Application on the premise that though **Section 321A** is not mentioned in **Section 324**, **Section 321A** has not been excluded

because the Sections are inter linked to form an interconnected legal frame work for Appeals.

13.27 We have considered the arguments of both Parties.

13.28 For us to resolve this argument coherently, we reproduce the two sections:

13.29 We first start with **Section 321A (1)**. This Section provides as follows:

***“If the Director of Public Prosecutions is dissatisfied with a judgement of a Subordinate Court as being erroneous in point of law or being in excess of jurisdiction, he may appeal against any such judgement to the High Court within fourteen days of the decision of the Subordinate Court”.***

13.30 On the other hand, **Section 324(1)** provides as follows:

***“Where the period has expired within which under section three hundred and twenty-two, an appeal shall be entered, an Appellant may nevertheless make an application in the prescribed form for his appeal to be heard and shall in support of any such application enter an appeal...”*** (emphasis, ours)

13.31 A critical analysis of **Section 324(1)** of **the CPC** reveals that the key word used is Appellant. The word Appellant encompasses the DPP when he is exercising his right of Appeal in **Section 324(1)**. Therefore, using the literal interpretation as submitted by Counsel, it is our considered view that the DPP is not excluded in **Section 324(1)** and can therefore apply for Leave to Appeal out of time where the 14 days has expired.

13.32 Having established that the DPP has not been excluded, the holding in **Samuel Miyanda Vs Raymond Handahu** <sup>(11)</sup> where it was guided that the express mention of a thing excludes things which are not mentioned is distinguished and does not apply. In any event, the Application before us as reflected in the “Notice of Appeal against Acquittal” refers to **Sections 321A-324** in brackets, and under “Application to appeal out of time”, refers to **Section 324**.

13.33 Before leaving this point we have found it prudent to state that much as we salute Counsel’s ingenuity, Counsel is reminded that when it comes to statutory interpretation, a statute must be read as a whole and interpretation made of all parts together because the meaning of the statute and the intention of the legislature can only be derived from a consideration of the whole enactment (see **SW Water Authority**<sup>(11)</sup>).

***iii. Whether the Amended Section 324 (1) contemplates Section 321A of the CPC.***

13.34 It was Counsel’s submission that **Section 321A** is an Amendment which came long after **Section 324 (1)** was enacted and that is why **Section 324 (1)** does not make reference to **Section 321A** because the provision did not exist at the time when **Section 324 (1)** was enacted.

13.35 In our considered view an Amendment, is not made in isolation. Further the moment a particular Section is amended, it becomes part and parcel of the Principal Act, implying that all Sections must be read together in giving effect to the intention of the Legislature (see **SW Water Authority** *supra*). Having found that an

Amendment is linked to the other Sections within the Act, the Argument by Counsel for 3<sup>rd</sup> Respondent fails for lack of merit.

***(iii) Whether the Applicant has adduced sufficient reasons to persuade this Court to grant Leave to extend time within which to Appeal.***

- 13.36 It was Counsel's submission that the delay in filing the Appeal within the prescribed time was not deliberate, but was caused by multiple Applications and Appeals embarked upon by the Respondents.
- 13.37 On the other hand, the Respondents have argued that the Applicant's reason for not filing the Appeal as required by **Section 324A** of the **CPC** are not sufficient.
- 13.38 We have considered the arguments of both Parties.
- 13.39 From the outset, we state that it is common cause that in this Matter there were several Applications which were rightly or wrongly made by each Party. The bottom line is that none of the Parties can be faulted for having made those Applications as they were within their rights to do so.
- 13.40 Having stated the above, the question that still remains is whether we can grant the Applicant Leave to file the Appeal out of Time.
- 13.41 In resolving this pertinent question, regard will be had to the case of ***National Pensions Scheme Authority Vs Metraclarke Limited and Another***<sup>(14)</sup>*supra*, where the Court of Appeal pointed out that failure to take action within the prescribed time constitutes an inordinate delay, is inexcusable and fatal.
- 13.42 Further, in the case of ***Mwanza Vs the People***<sup>(17)</sup>, it was held that:

***“An Application for extension of time within which to appeal under Section 295 of the Criminal Procedure Code will only be granted where the delay is considerable, if the applicant can advance reasons sufficient in themselves for the delay or if there are such merits in the appeal that is likely to succeed.”*** (Emphasis ours)

13.43 In our reading of the two authorities, the guidance we decipher is that for an Appeal to be allowed, the Applicant must show that the delay was not inordinate and must furnish sufficient reasons.

13.44 In the present case, the view we take is that the delay was not inordinate though it has taken over four years. We say so because the length of the delay is not cast in stone but has to be reviewed on case by case basis. This is in line with the guidance in the persuasive Kenyan Court of Appeal case of ***Andrew Kiplaget Chemaringo Vs Paul Kipkorir Kibet***<sup>(25)</sup> where the Court stated that:

***“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for the delay is the key that unlocks the Court’s flow of discretionary favor. There has to be valid and clear reasons, upon which discretion can be favorably exercisable.”***

13.45 That holding in the cited case goes to the principle governing applications for extension of time to appeal, like under **Section 324 (1)** of the **CPC**. The import of the holding is that Courts do not, measure delays in terms of length alone, but in terms of

whether they are satisfactorily explained. A convincing explanation is what enables the Court to exercise its discretion to allow an appeal out of time.

13.46 Having found that the delay was not inordinate, the only question remaining for determination is whether there was a good explanation for delay.

13.47 In answering this question we find resonance in comparative jurisprudence. In *DPP Vs Mbugua & 6 Others*<sup>(18)</sup>, the Kenyan Court of Appeal held as follows:

***“Be it now settled that the Court has unfettered discretion to extend time for filing of a Notice of Appeal or Record of Appeal but the DPP must lay the basis for the exercise of the Court’s discretion by establishing that the delay in the appeal or record of appeal was not inordinate; that there was a good explanation for the delay and that the application for extension of time has been made without delay.”***

13.48 Further in *Republic Vs Nzioka*<sup>(19)</sup>, the Kenyan Court of Appeal stated as follows:

***“Extension of time is an equitable remedy to be enjoyed only by deserving applicants who act equitably. He who seeks equity must do equity. The Applicant must demonstrate that he was not at fault for the lapse of time. Extension of time is not a right of a litigant against the Court, but discretionary power of the Courts for which litigants must lay a basis where they seek the Court to grant.***

13.49 Further, in our jurisdiction, in the case of **Attorney General Vs Omar Dirie Hirsi**<sup>(3)</sup>, the Court of Appeal in interpreting **Order XIII (3) (a)** of the Court of Appeal Rules held *inter alia* that:

***“Clearly the Court’s discretion in an application for extension of time is informed by sufficient reasons. The applicant must therefore give reasons for their failure to make the application within the prescribed time. Therefore, it is for the Court to evaluate the reasons given and decide whether the applicant complied with the rules and is excusable to warrant the grant of an extension.”***

13.50 In addition, in **D.E. Nkhuwa Vs Lusaka Tyre Service Limited**<sup>(26)</sup> the Supreme Court stated that:

***“The granting of an extension of time within which to appeal is entirely in the discretion of the Court, but such discretion will not be exercised without good cause. In addition to the circumstances of the delay and the reasons therefore which provide the material on which the Court may exercise its discretion another most important factor is the length of the delay itself.”***

13.51 Therefore, the party seeking such a discretionary order which is granted on a case by case basis, must satisfy the Court, by placing some material before the Court upon which such discretion may be exercised judiciously. The Court will then consider the circumstances, the reasons for the delay, the length of the delay, and in some cases the merits of the proposed appeal.

13.52 Having analyzed the Law in light of the facts, it is our considered view that the explanation given by the DPP is sufficient for us to allow the Application. The DPP has demonstrated that numerous applications were made by both Parties. The last Application was only resolved in December 2024.

13.53 Having considered the various Applications made by both Parties we agree that an Appeal could not have been competently made while these Applications were still pending before various Courts. The moment the numerous Applications were cleared, the last one being in December 2024, the Applicant filed a Notice of Appeal and seeking Leave to Appeal out of time, demonstrating that what delayed the Appeal were the applications that were pending.

13.54 Therefore, having reviewed the circumstances before us, it is our considered view that the Applicant has adduced sufficient reasons to warrant this Court to exercise its discretion to allow the Application for Leave to file the Appeal out of Time. As we allow the Application, we are mindful of our holding in the recent case of ***Francis Muchemwa***<sup>(23)</sup> where we held that rules of Court should be obeyed and that those who disobey Court rules do so at their own peril. However, we are of the considered view that the circumstances of this case are an exception to the general rule, hence our allowing the Application.

***(iv) Whether the Respondents will be prejudiced if this Court grants the application for leave to file a Notice of Appeal out of Time.***

13.55 It was Counsel's submission that granting the Applicant Leave to Appeal out of Time will seriously prejudice the Respondents in the

sense that if the Acquittal is disturbed on Appeal and a trial ordered to proceed, a delay of more than four (4) years is likely to negatively affect the delivery of justice as witnesses may not accurately recount the facts relating to the Matter.

13.56 The Court was referred to the cases of **R Vs Askov**<sup>(16)</sup> and **Richard Sakala Vs Attorney Genera**<sup>(5)</sup> *supra*.

13.57 It was further submitted that granting the Applicant Leave to appeal after 4 years would amount to injustice on the Respondents. Counsel referred the Court to the holding of Lord Hewit (as he was then) in the case of **R Vs Sussex Justices, ex parte McCarthy**<sup>(20)</sup> in which the following was stated:

***“It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. Nothing is to be done which creates even a suspicion that there has been an improper inference with the course of justice.”***

13.58 The Applicant on the other hand argued that allowing the Application will not in any way prejudice the Respondents.

13.59 We have considered the arguments of both Parties.

13.60 In our considered view, allowing this application will not in any way prejudice the Respondents. We say so because in allowing the Application the Matter will be heard on its merits as opposed to being disposed of on a technicality.

13.61 Further in allowing the Application, the ends of justice will be served in that both Parties will be afforded a fair hearing in line with **Article 18** of the **Constitution**. We say so because the


period of 4 years is reasonable in the circumstances taking into account the various Applications that were in the various Courts. Further both Parties will be given time before an impartial tribunal to prosecute their case to the best of their abilities so that justice is not only done but seen to be done in tandem with the holding in ***R Vs Sussex Justices, ex parte McCarthy*** supra.

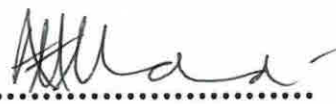
13.62 As we state the above, we acknowledge that in the 4 years a lot could have happened to the Witnesses but the serious allegations and the public nature of this case demands that the ends of justice be served for the benefit of all the Parties involved.


#### **14.0 CONCLUSION**

14.1 Based on the foregoing, we find that this is a proper matter where we can exercise our discretion to extend time within which to file an Appeal. The Applicant's Application for Leave to file Appeal out of Time is hereby granted.

**DELIVERED AT LUSAKA THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2025**

  
.....  
**S. M. WANJELANI**  
**HIGH COURT JUDGE**

  
.....  
**A. MALATA-ONONUJU**  
**HIGH COURT JUDGE**

  
.....  
**S. V. SILOKA**  
**HIGH COURT JUDGE**