

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

**2009/HPF/D133**

**BETWEEN:**

**IAN ASHERWOOD**

**AND**

**SHERYLLYN HELEN ASHERWOOD**



**PETITIONER**

**RESPONDENT**

***Before: Hon. Mrs. Justice M. M. Bah-Matandala  
Dated the 13<sup>th</sup> day of November 2025.***

*For the Petitioner: Ms. Kabalata Messrs. Chalwe & Kabalata Legal*

*Practitioners*

*For the Respondent: Ms. S. Clayton Messrs. Shandavu Clayton*

*Chambers*

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## **RULING**

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**Legislation referred to:**

1. *The Constitution of Zambia (Amendment) Act No. 2 of 2016*
2. *The High Court Act, Cap 27 of the Laws of Zambia*
3. *The High Court Rules, Cap 27*
4. *Rules of the Supreme Court (White Book, 1999 Edition)*
5. *The Matrimonial Causes Act No. 20 of 200*

**Cases referred to:**

1. *D.E. Nkhuwa v Lusaka Tyre Services Ltd (1977) Z.R. 43*
2. *Twampane Mining Co-operative Society Ltd v E & M Storti Mining Ltd (2011) SCZ Judgment No. 20*
3. *BP Zambia Plc v Interland Motors (2001) Z.R. 37*
4. *Access Bank (Zambia) Ltd v Group Five/ZCON Business Park Joint Venture [2016] ZMSC 24*
5. *National Breweries Plc v Chakama Investments Ltd (Appeal No. 6 of 2022; [2022] ZMCA 115)*
6. *Lisulo v Lisulo (1998) Z.R. 75*
7. *Chibwe v Chibwe (2001) Z.R. 1*

**English and Comparative Authorities referred to:**

1. *Minton v Minton* (1979) A.C. 593
2. *Calderbank v Calderbank* (1976) Fam 93
3. *Ratnam v Cumarasamy & Another* [1964] 3 All E.R. 933
4. *Wilson v Church (No. 2)* (1879) 12 Ch.D. 454
5. *Linotype-Hell Finance Ltd v Baker* (1992) 1 All E.R. 887

**Texts and Commentaries**

1. *Bromley's Family Law*, 7th Edition – Butterworths, London
2. *Rules of the Supreme Court (White Book)* – 1999 Edition

## **1.0 INTRODUCTION**

1.1 This is a Ruling on the Petitioner's application for leave to file a Notice of Appeal out of time against the ruling of the Learned District Registrar, Mr. M. Nkole, delivered on 18<sup>th</sup> November 2022, which dismissed the Petitioner's application for extension of time within which to appeal against the Learned Deputy Registrar's Ruling of the 23<sup>rd</sup> March 2015 on property settlement and ancillary relief.

1.2 The Respondent opposes the application, arguing that it constitutes yet another attempt by the Petitioner to re-open matters conclusively determined by several judicial officers over the last decade, and that the delay remains inordinate and unexplained.

## 2.0 Background

- 2.1 The background of this matter is long and well-documented.
- 2.2 On the 23<sup>rd</sup> March 2015, the Learned Honourable Deputy Registrar, as he was then, Mr. Charles Kafunda, delivered a detailed ruling on ancillary relief under the *Matrimonial Causes Act No. 20 of 2007*.
- 2.3 He ordered that the Matrimonial Home, Stand No. 521 Lusaka, be valued and sold at market value. Out of the proceeds, USD 120,000 was to be paid to the Petitioner's father for his contribution towards the acquisition, and the residue to be shared 2/3 for the Respondent and 1/3 for the Petitioner.
- 2.4 The Petitioner was dissatisfied and filed a sequence of applications:
- i) *On the 4<sup>th</sup> May 2015 an application for leave to appeal to the Supreme Court was filed 42 days after judgment which was dismissed by ruling dated 5<sup>th</sup> July 2017.*
  - ii) *On 29<sup>th</sup> August 2017 an application for leave to appeal to a Judge in Chambers*

*was filed and which was then dismissed by this Court on 14<sup>th</sup> December 2017 for being misconceived.*

*iii) On 8<sup>th</sup> February 2022 an application for extension of time was filed before District Registrar M. Nkole. It was then dismissed on 18<sup>th</sup> November 2022 as an abuse of court process.*

*iv) The Petitioner has now filed this application dated 7<sup>th</sup> February 2025, seeking to re-litigate the same issue once more.*

2.5 It is also material to state that **the Court file went missing** sometime **between 2023 and 2024**, and only resurfaced in early 2025. This caused administrative delay in the listing of the matter for directions.

2.6 However, as the record shows, the missing file did not prevent either party from taking steps previously ordered; it merely delayed scheduling of the hearing. This fact, though regrettable, does not affect the legal determination of the issues already adjudicated.

### **3.0 Submissions for the Petitioner**

3.1 Counsel for the Petitioner, Mrs. K. M. Kabalata, submitted that the delay in filing the notice of appeal was not deliberate but occasioned by procedural confusion on the correct forum to which the appeal should have been lodged.

3.2 She argued that under **Article 118(2)(e)** of the *Constitution of Zambia (Amendment) Act No. 2 of 2016*, courts must administer justice “**without undue regard to procedural technicalities.**”

3.3 She further relied on Section 13 of the High Court Act, Cap 27, which allows the Court to apply law and equity concurrently to avoid injustice.

3.4 Counsel urged the Court to adopt a **liberal approach** towards delay, arguing that the matter has not yet been heard on its merits.

3.5 It was contended that the appeal raises **arguable issues** relating to whether the Deputy Registrar properly applied principles of property adjustment under **Section 55 of the Matrimonial Causes Act**, and that refusal to extend time would result in **grave injustice**.

#### 4.0 Respondent's Submissions

- 4.1 Counsel for the Respondent, **Ms. Susan Clayton**, opposed the application and submitted that the Petitioner has **repeatedly re-litigated** the same matter through **five applications** between 2015 and 2025, all of which have been dismissed on similar grounds.
- 4.2 She stated that the **2015 ruling** has never been appealed within time and has become **final and binding**; all subsequent applications are therefore **res judicata**.
- 4.3 She said the Petitioner's reliance on Article 118(2)(e) is misplaced, as the ***Supreme Court in Access Bank (Zambia) Ltd v Group Five/ZCON Business Park Joint Venture [2016] ZMSC 24*** clarified that Article 118(2)(e) **does not excuse non-compliance with procedural rules**.
- 4.4 Furthermore, it was submitted that the Respondent has suffered **severe prejudice**: she has not enjoyed the benefit of the 2015 property order for over **ten years**, contrary to the principle in ***Lisulo v Lisulo (1998) Z.R.***

**75** that successful parties must enjoy the fruits of their judgments.

4.5 She urged the Court to dismiss the application with costs, citing ***BP Zambia Plc v Interland Motors (2001) Z.R. 37***, where the Supreme Court held that it is **an abuse of process** for the same parties to re-litigate identical issues before different courts or judges.

## **5.0 Issues for Determination**

5.1 From the submissions and record, the Court identifies the following issues for determination:

- i. Whether there is **sufficient cause** for the Court to exercise its discretion to extend time to appeal out of time;
- ii. Whether the application constitutes an **abuse of court process**; and
- iii. Whether the **interests of justice** and equity warrant a departure from the established procedural rules.

## **6.0 Applicable Law**

6.1 The Court refers to the following provisions and cases:

**Order 30 Rule 10 of the High Court Rules, Cap 27**

which governs appeals from decisions of Registrars to a Judge in Chambers. It imposes a **seven-day time limit** for such appeals, ensuring certainty and finality. The Petitioner failed to comply with this mandatory period.

- 6.2 Order 3 Rule 5 of the Rules of the Supreme Court (White Book, 1999 Edition) allows extension of time only where the applicant demonstrates “good cause.” The rule is cited because it establishes the discretionary nature of extensions and the necessity for a full, truthful explanation of delay supported by affidavit evidence.
- 6.3 The case of ***D.E. Nkhuwa v Lusaka Tyre Services Ltd (1977) Z.R. 43*** is an authority for the proposition that extension of time is discretionary but will not be exercised without good cause. This principle guides the Court in assessing whether the Petitioner’s explanation merits indulgence.
- 6.4 The case of ***Twampane Mining Co-operative v E & M Storti Mining Ltd (2011) SCZ Judgment No. 20*** clarifies that the Court must have material before it on which to exercise discretion, that is, evidence of reasons and circumstances of delay. Here, none was presented.

- 6.5 ***The case of BP Zambia Plc v Interland Motors (2001) Z.R. 37*** is an authority on abuse of court process; re-litigating identical issues before different courts or judges undermines judicial integrity. This case is directly applicable to the Petitioner's repetitive applications.
- 6.6 The case of ***Access Bank (Zambia) Ltd v Group Five/ZCON Business Park Joint Venture [2016] ZMSC 24*** defines the limits of **Article 118(2)(e)**, holding that the constitutional provision does not abolish compliance with rules of court; it only mitigates hardship caused by minor technical lapses, not inordinate delay.
- 6.7 And the case of ***Lisulo v Lisulo (1998) Z.R. 75*** – emphasises that successful litigants must enjoy the **fruits of their judgments**, underscoring the prejudice suffered by the Respondent due to prolonged litigation.
- 6.8 Furthermore, **Section 55 of the Matrimonial Causes Act No. 20 of 2007** provides the legal framework for property adjustment orders and demonstrates that the 2015 ruling was properly grounded in law.

## 7.0 Analysis and determination

- 7.1 The first issue for determination is on the length and reason for delay. The record shows that the **delay exceeds ten (10) years** from the date of the original ruling.
- 7.2 The Petitioner attributes this to procedural confusion and the temporary disappearance of the file. While the Court acknowledges that the file was indeed misplaced between 2023 and 2024, that occurrence came eight years after the Petitioner had already failed to appeal within the seven-day statutory window. The missing file therefore cannot justify or excuse the preceding eight-year inaction.
- 7.3 The Court also notes that even when the file resurfaced, the Petitioner still took six months to file this application, again showing lack of diligence. As held in *Nkhuwa v Lusaka Tyre Services Ltd*, unexplained or casual delay does not warrant judicial indulgence.

7.4 The second issue is on abuse of process. The Petitioner has persistently sought to re-open a matter conclusively determined on several occasions such as:

*a) 2015 (Kafunda DR),*

*b) 2017 (Bah-Matandala Judge- myself),*

*c) 2022 (Nkole DR).*

7.5 The doctrine in *BP Zambia Plc v Interland Motors* is unequivocal:

*“It will be an abuse of process if the same parties re-litigate the same subject matter from one action to another or from judge to judge.”*

7.6 This conduct undermines finality and places undue strain on judicial resources. The present motion squarely falls within that mischief.

7.7 The third issue is on equity in relation to Article 118(2)(e). The Court appreciates that Article 118(2)(e) mandates justice without undue technicality, but as the *Access Bank* case cautioned, this provision does not entitle litigants to disregard statutory timelines or engage in perpetual litigation. Equity, as Section 13 of

the High Court Act dictates, may only intervene where a party acts vigilantly and in good faith. In this case, the Petitioner has not acted with diligence but has instead prolonged the Respondent's deprivation of her 2/3 share in the matrimonial home.

7.8 The fourth issue is on prejudice. The Respondent has remained without the benefit of her lawful entitlement for over a decade. She continues to endure financial insecurity, contrary to the clean-break principle recognised in *Minton v Minton (1979) A.C. 593*, as well as the equitable principle in *Lisulo v Lisulo* that "litigation must come to an end." Granting this application would only extend her hardship and perpetuate uncertainty.

## **8.0 Conclusion**

8.1 Having carefully considered the pleadings, affidavits, submissions, authorities cited, and the entire record of this case, I make the following findings:

- i) The delay is inordinate and remains wholly unexplained within the meaning of *Nkhuwa v Lusaka Tyre Services Ltd.*

- ii) The application is repetitive and amounts to abuse of court process as defined in *BP Zambia v Interland Motors*.
- iii) The invocation of **Article 118(2)(e)** cannot rescue an application made ten years out of time.
- iv) The **Respondent has suffered demonstrable prejudice**, and justice demands that litigation be ended.

## 9.0 Orders

9.1 Accordingly, the Court makes the following orders:

- a) The Petitioner's application for leave to file a Notice of Appeal out of time is hereby dismissed for want of merit.
- b) The Ruling of the District Registrar dated 18<sup>th</sup> November 2022 is affirmed in full.
- c) The Ruling of the Deputy Registrar dated 23<sup>rd</sup> March 2015 remains final and binding, and shall be enforced forthwith.
- d) The Deputy Registrar is directed to facilitate the execution of the property-adjustment order including valuation, sale, and distribution of

proceeds (2/3 to the Respondent, 1/3 to the Petitioner) after repayment of USD 120,000 to DW1.

e) Costs are awarded to the Respondent, to be taxed in default of agreement.

**Delivered at Lusaka this 13<sup>th</sup> day of November, 2025.**

M. M. BAH-MATANDALA  
**HIGH COURT JUDGE**

