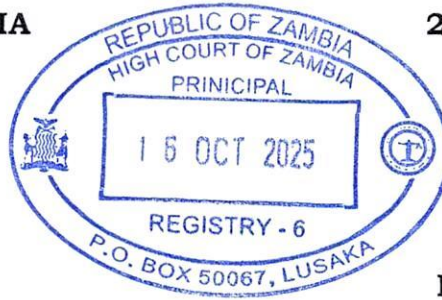


**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)



2019/HP/1818

BETWEEN:

MARY CHITIMBA MULENGA
(T/A MC Mulenga & Company)

PLAINTIFF

AND

SCIROCCO ENTERPRISES LIMITED

DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 16th
DAY OF OCTOBER, 2025**

*For the Plaintiff : Ms C. Dokowe, Messrs EBM Chambers and Mrs Florence
K. Daka, Messrs MC Mulenga and Company*
*For the Defendant : Ms C. Chisengalumbwe, Messrs Victor Kachaka and
Company*

R U L I N G

CASES REFERRED TO:

- 1. Paul Evans Kasonde v Finance Bank Building Society & Lingson
Chikoti Appeal No 194 of 2016***

LEGISLATION REFERRED TO:

- 1. The High Court Rules, Chapter 27 of the Laws of Zambia***

1. INTRODUCTION

1.1 On 11th April, 2024, Mary Chitimba Mulenga suing as MC Mulenga and Company, filed summons to review the Ruling dated 22nd April, 2022, which was delivered by the District Registrar. The application was made pursuant to **Order XL**

Rule 5 of the High Court Rules, Chapter 27 of the Laws of Zambia and was supported by an affidavit.

1.2 In opposing the application, Scirocco Enterprises Limited filed an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition on 5th July, 2024.

1.3 An affidavit in reply was filed on 14th January, 2025.

2. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR MARY CHITIMBA MULENGA

2.1 Counsel in making the application, stated that they applied for review of the Ruling dated 31st August, 2022, and that in doing so, they placed reliance on the affidavit which was filed in support of the application, as well as the affidavit in reply.

RESPONSE BY COUNSEL FOR SCIROCCO ENTERPRISES LIMITED

2.2 It was stated in response, that Counsel relied on the affidavit in opposition together with the List of Authorities and Skeleton Arguments in opposition which were filed on 5th July, 2024.

REPLY BY COUNSEL FOR MARY CHITIMBA MULENGA

2.3 Counsel in reply, relied on the affidavit in reply.

3. DECISION OF THIS COURT

3.1 I have considered the application. ***Order 40 Rule 5 of the High Court Rules, Chapter 27 of the Laws of Zambia*** provides as follows:

“5. (1) Any party who is dissatisfied with the decision of a taxing master to allow or to disallow

any item in whole or in part on review under the two last foregoing rules, or with the amount allowed in respect of any item by a taxing master on any such review, may apply to a Judge for an order to review the taxation as to that item or part of an item.

(2) An application under this rule for review of a taxing master's decision in respect of any item may be made at any time within fourteen days after the taxing master's certificate in respect of that item is signed, or such longer time as the taxing master at the time when he signs the certificate, or the Court at any time, may allow.

(3) An application under this rule shall be made by summons and shall, except where the Judge thinks fit to adjourn into court, be heard in chambers.

(4) Unless the Judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on the review by the taxing master but, save as aforesaid, on the hearing of any such application the Judge may exercise all such powers and discretion as are vested in the taxing master in relation to the subject-matter of the application.

(5) On an application under this rule the Judge may make such order as the circumstances require, and in particular may order the taxing master's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another taxing master for taxation.”

- 3.2 In the affidavit which was filed in support of the application, Mary Chitimba Mulenga Harawa gave a background to how these proceedings were commenced, averring that she filed the matter on 14th November, 2019, by Writ of Summons which was accompanied by a statement of claim.
- 3.3 She further stated that she sought the following reliefs:
- i. Payment of the sum of K776, 643.27 being money owed for legal services which were rendered under retainer agreements from 2014 to 2019;
 - ii. Payment of the sum of K91, 502.00 being the refund of uncollected materials which were purchased by Mary Chitimba Mulenga;
 - iii. Damages for breach of the agreement and inconvenience;
 - iv. Interest on the sum claimed;
 - v. And costs.
- 3.4 Mary Chitimba Mulenga further deposed that this Court, by a Ruling dated 19th November, 2020, set aside the Judgment that was entered on admission, and referred the claim for payment of legal fees to taxation.

- 3.5 It was Mary Chitimba Mulenga's averment that, that was how on 5th May, 2021, she filed the Bill of Costs out of time pursuant to an Order of the Court.
- 3.6 She went on itemize the items in the Bill of Costs as having been legal work on thirty (30) contentious matters which came to 178 pages, and that she filed seven (7) bundles of documents, and the sum of K91, 502.00 for the uncollected building materials.
- 3.7 In still deposing, Mary Chitimba Mulenga stated that aggrieved with bill of costs as itemized, Scirocco Enterprises Limited filed a preliminary issue before the Hon District Registrar L. Wamundila, seeking the taxation of only the sum of K776, 643.27, being the value of the costs and the disbursements as pleaded in the Writ of Summons.
- 3.8 It was stated that the District Registrar ruled in favour of Scirocco Enterprises on 31st August, 2022, by stating that taxation of the costs, would only be on the sum of K776, 643.27 as pleaded in the Writ of Summons.
- 3.9 Mary Chitimba Mulenga further averred that by that Ruling, the District Registrar declined taxation on the sum of K936, 176.73 as tabulated in the Bill of Costs which was dated 5th May, 2021.
- 3.10 Thus, on 8th February, 2023, Mary Chitimba Mulenga filed a Bill of Costs in the sum of K776, 643.00, which excluded the preparatory and anticipatory costs and the costs of uncollected construction materials.

- 3.11 She deposed that the District Registrar no longer sits at Lusaka, and the sitting District Registrar Ireen Wishimanga cannot review the decision of another District Registrar.
- 3.12 However, the now sitting District Registrar on 8th March, 2024 granted leave to Mary Chitimba Mulenga to file for review of the Ruling out of time.
- 3.13 The gist of the affidavit in opposition as deposed to by David Chisheta, the Chief Financial Officer of Scirocco Enterprises Limited, was that paragraphs 12-15 of the affidavit which was filed in support of the application, did not state new facts beyond expressing grievances with the Ruling dated 31st August, 2022, which grievances should have been pursued on appeal against the Ruling.
- 3.14 Further averment was made, that the application should have been made within Fourteen (14) days of the Ruling, and thereafter, with special leave of the Court. However, the application was made on 8th November, 2023, over a year after the Ruling that is complained about was delivered.
- 3.15 It was also stated that, no reasons had been advanced for the failure to make the application within Fourteen (14) days and that taxation in the matter had started.
- 3.16 In the List of Authorities and Skeleton Arguments in opposition, the law in **Order 40 Rule 3 (2) of the High Court Rules** was cited.
- 3.17 The argument was that pursuant to that Rule, while the District Registrar did not prescribe the time within which an application for review ought to have been made, it ought to

have been made within Fourteen (14) days of the date of the Ruling.

- 3.18 Concession was made, that this Court has power to make any Orders that it considers necessary for doing justice between the parties, which includes the power to extend time within which to take a step.
- 3.19 However, it was stated that the exercise of this power must be done within certain bounds, and the Court must be accorded a reason upon which it can move and exercise such discretion.
- 3.20 In support of that position, the case of ***Paul Evans Kasonde v Finance Bank Building Society & Lingson Chikoti*** ⁽¹⁾ was relied on, stating that it held as follows:

“..in an application for special leave to review, a party is duty bound to disclose the reason why the application is being made outside the mandatory 14 days stipulated in Order 39(2) of the High Court Rules Cap 27. No such reason has been disclosed in either the first respondent’s affidavit in opposition or the affidavit in reply. It is this reason that the court should have considered in order to reach a decision whether or not to grant special leave to review.”

- 3.21 The argument was that as no reasons had been advanced, the Court should not allow the application for review.

- 3.22 It was also stated that the purpose of review is to put things right, and there being no reasons that had been advanced, the application should be denied.
- 3.23 In the affidavit in reply, Mary Chitimba Mulenga deposed that the averments as made in relation to when the application ought to have been filed was addressed by the District Registrar Ireen Wishimanga on 8th November, 2023.
- 3.24 She stated that the said District Registrar on 28th March, 2024, granted her leave to file summons for review out of time. It was also her averment, that pursuant to the Court Order that allowed her to file the application outside the statutory time limit of Fourteen (14) days, she made the application to this Court on 11th April, 2024.

DECISION

- 3.25 The record shows that Mary Chitimba Mulenga seeks a review of the Ruling which was delivered by the District Registrar on 31st August, 2022 out of time, pursuant to **Order 40 Rule 5 of the High Court Rules**. The provisions of that Order have been cited above.
- 3.26 It will be noted that sub rule 1 of Rule 5 of the said Order 40, allows for an application for review to be made to a Judge within Fourteen (14) days of a Taxing Masters' decision to allow or to disallow any item in whole or in part on review.
- 3.27 Further note will be made, that under sub rule 2, such an application has to be made at any time within Fourteen (14) days after the Taxing Master's certificate in respect of that item is signed, or such longer time as the Taxing Master at

the time when he signs the certificate, or the Court at any time, may allow.

- 3.28 The averment that was made by David Chisheta in the affidavit which was filed in opposition to the application shows that the taxation proceedings are still on going in the matter.
- 3.29 The Ruling that is sought to be reviewed which is dated 31st August, 2022, disallowed the claim for costs against an entity that was not party to these proceedings.
- 3.30 The District Registrar also stated that the amount claimed in the Writ of Summons was K776, 643.27 and not K936, 176.73.
- 3.31 The District Registrar further found that the issues raised in the third preliminary issue, relating to whether the bundle of documents which were filed were competent for the purpose for which they were filed, could be tackled during taxation.
- 3.32 What can be seen, is that Mary Chitimba Mulenga seeks a review of the Ruling of the District Registrar which was made on a preliminary issue during taxation, and before the taxation had been concluded.
- 3.33 **Order 40 Rule 5 of the High Court Rules**, only empowers a Judge to review a Taxing Master's certificate, and which Taxing Master's Certificate has not been issued in this case.
- 3.34 That being the position, this Court has been improperly moved to review the Ruling of the District Registrar dated 31st August, 2022.

3.35 Further, it will be noted that the District Registrar Ireen Wishimanga on 28th March, 2024, in Ruling that she had no jurisdiction to review the Ruling of a fellow District Registrar, stated that Mary Chitimba Mulenga should apply for leave to appeal to a Judge at Chambers out of time.

3.36 There is no application that was filed for leave to review the Ruling out of time on the Court record.

4. CONCLUSION

4.1 There being no Taxing Certificate that has been issued by the Taxing Master, the application for review fails with costs to Scirocco Enterprises Limited. Leave to appeal is granted.

DATED AT LUSAKA THE 16th DAY OF OCTOBER, 2025

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE

