

**IN THE SUPREME COURT FOR ZAMBIA
HOLDEN AT LUSAKA**

**APPEAL NO. 003/2013
SCZ/8/355/2012**

(Civil Jurisdiction)

BETWEEN:

INVESTTRUST BANK PLC



APPELLANT

AND

BUILD IT HARDWARE LIMITED

1ST RESPONDENT

YOUSUFF ESSA

2ND RESPONDENT

Coram: Chibomba, Malila, and Kaoma, JJS.

On 8th October, 2014 and 30th January, 2018

For the appellant: Mr. M. Nchito, SC and Mrs. N. Simachela of Messrs Nchito and Nchito

For the respondents: Mr. M. Zulu of Messrs Makebi Zulu Advocates.

JUDGMENT

Malila, JS, delivered the judgment of the court

Cases referred to:

1. *D. E. Nkhuwa v. Lusaka Tyre Services Limited* (1977) Z.R 43.
2. *Zambia Revenue Authority v. Jayesh Shah* (2001) SCZ Judgement No. 10.
3. *Zambia Revenue Authority v. T and G Transport* (2007) ZR (S.C).
4. *Mobile Zambia Limited v. Msiska* (1983) Z.R 86 (S.C).
5. *Sipalo v. Mundia* (1966) Z.R. 105 (H.C.)
6. *Carmine Safaries Limited and Another v. Zambia National Tender Board and 6 Others* (Appeal No. 145/2003).
7. *Twampane Mining Corporative Limited and E and M Storti Mining* (2011) Z.R 67.
8. *Palata Investments Limited and Others v. Burt & Sinfield Limited and Others* (1985) ALL E.R 517.
9. *Water Wells Limited v. Wilson Samuel Jackson* (1984) Z.R 98 S.C.
10. *Stanely Mwambazi v. Morester Farm* (1997) Z.R 108 S.C.

Legislation referred to:

1. *Rules of the Supreme Court (1999) Order 59/4/17*
2. *Supreme Court Rules, Cap.25 Rule 12 and Rule 50*

We regret the rather inordinate delay in delivering this judgment caused by an administrative lapse on our part.

The appeal is against a ruling of the High Court, rejecting the appellant's application to appeal out of time. The main cause before the High Court was an application by the second respondent, as the judgement debtor, to set aside an intended conveyance or foreclosure of a property and for an order for directions pursuant to Order 2, Rule 2 and Order 88/5/13 of the Rules of the Supreme Court. This application was filed on the 12th of May, 2010, but was only heard on the 7th of August, 2012 as the parties had sought to settle the matter *ex curia*, but failed. The background to the application was elaborated in the affidavits filed in support of the application. The learned Judge delivered his ruling in favour of the respondents on 14th August, 2012 and granted leave to the appellant to appeal. The appellant however failed to do so within the period prescribed.

On 18th October, 2012, the appellant filed into the lower court a summons for leave to appeal out of time pursuant to Rule 12 of the Supreme Court Rules chapter 25 of the laws of

