

**IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)**

**SCZ/8/33/2019**



**BETWEEN:**

**WORKERS COMPENSATION FUND CONTROL BOARD APPELLANT**

**AND**

**REGINA K. KAPWELE**

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

**LORDWELL KALUBANKWA**

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

Coram: Kajimanga, JS in Chambers on 5<sup>th</sup> December 2019 and 2<sup>nd</sup> January 2020

**FOR THE APPELLANT:**

Mr. E.C. Banda SC of Messrs ECB Legal Practitioners

**FOR THE RESPONDENTS:**

Mr. D. Tambulukani of Messrs Derrick Mulenga and Company

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**R U L I N G**

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**Legislation referred to:**

**Supreme Court Act, Chapter 25 of the Laws of Zambia: Rules 12 and 7.**

This is a ruling on an application for extension of time within which to file an application for leave to appeal out of time. It is made pursuant to Rules 12 and 7 of the Supreme Court Rules, Supreme

Court Act Chapter 25 of the Laws of Zambia.

The application is supported by an affidavit sworn by one Patrick Siampwili, legal counsel in the employ of the appellant. He deposed that the 1<sup>st</sup> and 2<sup>nd</sup> respondents commenced an action against the appellant in the Industrial Relations Court seeking payment of monies as underpayment of terminal benefits. By a judgment dated 20<sup>th</sup> January 2018, the appellant lost the matter but leave to appeal was granted to it as per exhibit marked "PS1". The appellant exercised its right of appeal and the Court of Appeal delivered its judgment on 26<sup>th</sup> July 2019 (exhibit marked "PS2"). Being dissatisfied with the judgment of the Court of Appeal, the appellant intends to appeal to the Supreme Court.

The deponent also stated that the appellant's board has since instructed its advocates to proceed with the appeal. Pursuant to the same, the appellant made an application before the Court of Appeal for extension of time within which to file an application for leave to appeal as per exhibit marked "PS4". The court delivered its ruling on 16<sup>th</sup> October 2019 (exhibit marked "PS5") and refused to grant the appellant the leave sought. In delivering its ruling, the Court of

Appeal held that there was no question of public importance that was raised in the intended appeal. However, following the judgment of the Court of Appeal, several persons have made an application in the Industrial Relations Court seeking a declaration that they are similarly circumstanced with the 1<sup>st</sup> and 2<sup>nd</sup> respondents and thus the decision of the Court of Appeal dated 29<sup>th</sup> June 2019 is binding on them (see exhibit marked "PS7"). It was the deponent's belief that the said application speaks to the public importance of this matter as there are several other former employees likely to make similar applications. In the premises, the appellant is applying for leave to extend the time within which to file an application for leave to appeal or to file it out of time. The deponent stated that the appellant has been unable to lodge the application seeking leave to appeal within the stipulated time due to the following reasons:

- i. That although the judgment was delivered on 26<sup>th</sup> July 2019, a physical copy was not immediately available and the respondents served a copy on the appellant by a letter dated 16<sup>th</sup> August 2019 as per exhibit marked "PS3".
- ii. The appellant is a statutory body falling under the Ministry of Labour and Social Security, with a rigorous reporting

structure and soon after obtaining a physical copy of the judgment, the same had to be availed first to the director of legal and corporate services who then had to avail it to the commissioner as well as the board members who needed time to study the judgment as well as the historical background of the case.

- iii. That by the time the commissioner and the board were able to appreciate the matter and issue instructions to counsel on record, time within which to file an application for leave to appeal had elapsed.

The application is opposed by way of an affidavit in opposition sworn by the 1<sup>st</sup> respondent and skeleton arguments. The affidavit evidence disclosed that the appellant's assertion that it was unable to lodge the application seeking leave to appeal within the stipulated time, among other reasons, because the physical copy of the judgment delivered on 26<sup>th</sup> July 2019 was not availed to them immediately and the respondents served a copy on the appellants by letter dated 16<sup>th</sup> August 2019, is not valid because this Court notified both parties of the date of delivery of the judgment and therefore, the appellant was fully aware of the date of delivery of judgment but

decided not to attend court. Moreover, the hard copies of the judgment were ready for uplifting by 29<sup>th</sup> July 2019 and therefore, the appellant neglected to uplift a copy of the judgment out of its own volition.

It was deposed that the other reasons for the delay to appeal advanced by the appellant also lack merit on the ground that since it was the appellant who brought the appeal in the court below, all the reporting structures within the statutory body were aware or ought to have been aware of the pending appeal and should have taken interest to find out the outcome especially after being notified of the date of delivery of the judgment by the court in order for them to exhaust their consultations, study the judgment as well as the historical background for them to make the decision in time whether to appeal or not. Further, the recently appointed commissioner of the appellant institution is the person who was director legal and corporate services and the board of directors are the same ones that have been in office from the time the case started and they are already familiar with the case.

The respondents' affidavit evidence also revealed that when the appellant made the application in the court below for extension of time within which to file the application it was denied for lack of merit as there was inordinate delay on the part of the appellant. The deponent also stated that the court below was on firm ground when it held that there was no question of public importance that was raised because this matter arose from a master and servant relationship based on contracts signed between the appellant and the respondent, in which the appellant underpaid the respondents contrary to the terms of the contract. Further, that the fact that there are other employees that may be affected by the judgment of the Court of Appeal does not make the matter one of public policy consideration. That consequently, this is not a proper case to grant an extension of time within which to file an application for leave to appeal.

At the hearing, both counsel relied on the parties' respective affidavit evidence. I have considered this affidavit evidence as well as the skeleton arguments filed on behalf of the respondents.

As earlier indicated, this application is made pursuant to rules 12 and 7 of the Supreme Court Rules, Chapter 25 of the Laws of Zambia. Rule 12 enacts as follows:

- “(1) The Court shall have power for sufficient reason to extend time for making any application, including an application for leave to appeal, or for bringing any appeal, or for taking any step in or in connection with any appeal, notwithstanding that the time limited therefor may have expired, and whether the time limited for such purpose was so limited by the order of the Court or by these Rules, or by any written law.**
- (2) An application to the Court for an extension of time in relation to a judgment or the date of expiration of the time within which the application ought to have been made shall be filed at the registry within twenty-one days of the judgment or such time within which the application ought to have been made unless leave of the Court is obtained to file the application out of time, and**
- (3) An application to the Court for an extension of time under this rule in criminal cases shall be in Form CRIM/3 and in Civil cases in Form CIV/2 of the Third Schedule.**
- (4) In any order extending the time for doing any act, the Court shall specify the time within which such act shall be done.**
- (5) The Registrar of the High Court or the Master, as the case may be, shall not file any notice of appeal or other document instituting an appeal or any application which is delivered after the expiration of the times set out in these Rules unless leave to appeal or to make application out of time has been obtained, but shall notify the appellant or his practitioner that his appeal or application is out of time.”**

And rule 7 provides that:

**“Interlocutory applications may be heard and determined by a single judge:**

**Provided that no direction or order made on an interlocutory application shall operate so as to prejudice the Court from giving such decision upon the case as may be just.”**

It is plain from the foregoing that the grant of leave to extend time within which to make an application in connection with an appeal, including an application for leave to appeal is discretionary and will invariably depend on the circumstances of each case. For applicants to benefit from the discretionary power of the court under rule 12, they must show sufficient reasons for seeking an extension of time.

The gist of the appellant’s evidence is that it was unable to file the application for leave to appeal within the stipulated time because a physical copy of the judgment of the Court of Appeal was not immediately available and the respondents served a copy on the appellant on 16<sup>th</sup> January 2019; the appellant is a statutory body with a rigorous reporting structure; and by the time the appellant was able to appreciate the matter and issue instructions to counsel,



time within which to file an application for leave to appeal had elapsed.

The evidence on record indicates that the judgment complained of was delivered on 26<sup>th</sup> July 2019 and that on 13<sup>th</sup> September 2019, some 35 days after the prescribed fourteen days had elapsed, the appellant applied to the Court of Appeal for extension of time within which to apply for leave to appeal based on the said three grounds. In its ruling dated 15<sup>th</sup> July 2016, the lower court in dismissing the appellant's application for extension of time stated as follows:

**“In our view, whilst the delay may not appear inordinate, we do not find the reasons provided that the hard copy was not availed on time nor that the applicant being a corporate body are sufficient. Applications for extension of time which are made after time has expired, are likely to receive favourable consideration when sufficient reasons for the delay are advanced. The affidavit evidence on record shows that the applicant's reporting procedures took precedence over and above the requirements of the law.”**

I cannot agree more with the lower court that the appellant has not furnished or shown sufficient reasons to justify an extension of time for it to apply for leave to appeal. Having not appeared for the delivery of the judgment of 26<sup>th</sup> July 2019, the appellant, as aptly

contended by the respondent should have taken an interest to find out the outcome of its appeal before the Court of Appeal. Instead, it sat back and waited until a copy of the judgment was served on it by the respondents. Had the appellant's advocates made the effort to obtain a copy of the said judgment after its delivery, they would have had sufficient time to obtain instructions from their client and proceeded to apply for leave to appeal before the expiry of the stipulated time for making such an application. In my view, failure by the appellant to do so is fatal to this application. Stated differently, there is nothing to compel me to exercise my discretion in favour of granting the appellant an order for extension of time to apply for leave to appeal.

For the reasons stated above, I have come to the ineluctable conclusion that this application lacks merit. It is consequently dismissed with costs.



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**C. KAJIMANGA**  
**SUPREME COURT JUDGE**