

**IN THE SUPREME COURT OF ZAMBIA**      **APPEAL NO 109/2012**  
**HOLDEN AT LUSAKA**  
*(CIVIL JURISDICTION)*

BETWEEN:



**LENNOX NYANGU AND 601 OTHERS**      **APPLICANTS**

AND

**BARCLAYS BANK ZAMBIA PLC**      **RESPONDENT**

**Coram : Hamaundu, Malila and Chinyama, JJS,**  
on 6<sup>th</sup> October, 2020 and 4<sup>th</sup> November, 2020

For the applicants: Mr M.L. Mukande, State Counsel, and Mrs L.S. Tembo, Messrs M.L. Mukande & Co  
For the respondent: Mr M. Sakala and Mr J.Kawana, Messrs B & M Legal Practitioners

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## **JUDGMENT**

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**HAMAUNDU, JS**, delivered the Judgment of the Court

Cases referred to:

1. **Leonard Kanyenda v Ital Terrazo Ltd (in receivership), Appeal No.123/2016**
2. **Investrust Bank Plc v Hearmes Mining & Trading Limited and 7 others, Appeal No. 154/2015**

This motion seeks to move this court to review and, or, clarify its judgment.

In 2016, we heard *de novo* an appeal in which the respondent was the appellant and the applicants were the respondents. The judgment was in favour of the respondent, Barclays Bank Zambia Plc. We delivered that judgment on 9<sup>th</sup> March, 2016. The applicants filed this motion, almost four years later, on 12<sup>th</sup> February 2020. According to the heading, the motion is made pursuant to the following provisions: **Section 7** and **Section 25(1)(a)** of the **Supreme Court Act, Chapter 25** of the **Laws of Zambia**; **Rules 48(5), 77** and **78** of the **Supreme Court Rules, Chapter 25** of the **Laws of Zambia**; and, **Order 20 Rule 11** of the **Rules** of the **Supreme Court** (*White Book*), 1999 Edition. The question that immediately arises is whether this motion is competent, given that it was filed almost four years after the judgment. What gives rise to this question is **Rule 48** of the **Supreme Court Rules**. In so far as it is relevant to the issue herein, and in its amended form, the rule provides:

**“48(1) Applications to a single judge shall be made by motion or summons within fourteen days of the decision complained of which shall state the grounds of the application, and shall if necessary be supported by affidavits. The proceedings and other documents relating thereto shall be filed in duplicate.**

**(5) An application involving the decision of an appeal shall be made to the Court in like manner as aforesaid..... and the application shall be heard in Court unless the Chief Justice or presiding judge shall otherwise direct.”**

What was introduced by the amendment was the limitation as to the time within which the application must be made: In this case, it is within fourteen days of the decision complained of. **Sub-rule (5)** applies to decisions of the Court on an appeal. The sub-rule provides that applications on those decisions should be made directly to the Court, but in the same manner as applications to a single judge. Recently in the case of **Leonard Kanyanda v Ital Terrazo Ltd (in receivership)**<sup>(1)</sup> and that of **Investrust Bank Plc v Hearnmes Mining & Trading Limited and 7 others**<sup>(2)</sup> we held that the use of the phrase "*in like manner*" in sub-rule (5) means that any application under sub-rule(5) must, like those brought under sub-rule (1), be made within fourteen days of the decision complained of.

Mr Mukande, State Counsel, representing the applicants, said that this motion should not be caught up by **Rule 48** because it does not seek to challenge the judgment of the Court.

Some of the provisions under which this motion has been brought have no relevance to it: **Section 7** merely sets out the general jurisdiction of this court; **section 25(1)(a)** only gives this court power to confirm, vary, amend or set aside judgments that have been appealed against; and **Rule 77** only empowers this court to make orders for costs.

**Order 20, Rule 11** of the *'White Book'* on the other hand is a provision that applies to the High Court. Therefore, the only rule that this motion can be said to have been properly brought under is **Rule 78**.

**Rule 78** establishes the right for a party seeking to correct errors in this court's judgment to come back before the court and do so. The rule, however, does not set out the procedure that a party should follow in that regard. This is set out in **Rule 48**. Therefore, even if the motion does not seek to challenge this court's judgment, **Rule 48** still applies. In this case, since the decision involved is that of this court, **rule 48(5)** is the provision that is applicable: And going by what we have said above, the motion must be brought within 14 days of the judgment which the party wishes to be corrected. The applicants in this case did not do so. They have, instead, come back after almost four years. It follows that this motion is incompetent.

The motion will therefore stand dismissed. We awards costs to the respondent.

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 E.M. Hamaundu  
**SUPREME COURT JUDGE**

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 M. Malila  
**SUPREME COURT JUDGE**

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 J. Chinyama  
**SUPREME COURT JUDGE**