

IN THE SUPREME COURT OF ZAMBIA APPEAL NO. 167/2015  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)



BETWEEN:

**KENNEDY KAYOMBO KAPALU AND 254 OTHERS**      **APPELLANTS**

**AND**

**MAAMBA COLLIERIES LIMITED**

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

**ATTORNEY GENERAL**

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

Coram: Musonda, DCJ Kaoma and Kajimanga, JJS on 6<sup>th</sup> October, 2020

For the Appellants: No Appearance

For the 1<sup>st</sup> Respondent: Mr. G. Cornhill of Wilson & Cornhill

For the 2<sup>nd</sup> Respondent: No Appearance

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## **J U D G M E N T**

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Kaoma, JS, delivered the Judgment of the Court.

**Cases referred to:**

1. **Lenard Kanyanda v Ital Terrazo Limited (In Receivership) – Appeal No. 125 of 2016**

**Legislation referred to:**

1. **Supreme Court Rules, Cap 25 of the Laws of Zambia, Rule 48(1) and (4)**
2. **The Supreme Court (Amendment) Rules, 2012 (Statutory Instrument No. 26 of 2012)**

### **1. Introduction**

- 1.1 On 17<sup>th</sup> May, 2016, a single Judge of this Court dismissed the appellants' appeal for abuse of process. On 25<sup>th</sup> September, 2019, the appellants filed this Motion intending to set aside the order dismissing the appeal. The view we took when the motion was called for hearing was that it was improperly and incompetently before us.

## 2. Our Reasons

2.1 As we said in **Lenard Kanyanda v Ital Terrazo Limited (In Receivership)**,<sup>1</sup>, in terms of **Rule 48(4)** of the **Supreme Court Rules, Cap 25**, the motion ought to have been filed within fourteen days of the decision of the single judge dismissing the appeal. We draw the attention of the appellants to that case where we have explained that because of the use of the phrase '**shall in like manner**' in **Rule 48(4)**, any application made under that sub-rule, challenging the decision of a single Judge should be made within fourteen days as provided in **Rule 48(1)**.

## 3. Conclusion

3.1 It was for this reason that we held that the motion filed over three years and four months from 17<sup>th</sup> May, 2016 when the single Judge dismissed the appeal for abuse of process was improperly and incompetently before us as it was filed outside the stipulated period, without leave of court and we dismissed it, with costs. Besides, the motion would have failed on the merits.

  
**M.MUSONDA**  
**DEPUTY CHIEF JUSTICE**

  
**R.M.C. KAOMA**  
**SUPREME COURT JUDGE**

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