

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

FRESHVIEW CINEMAS LIMITED

APPELLANT

AND

**BLB PROJECT DEVELOPMENT
CONSULTANTS LIMITED**

RESPONDENT

**BEFORE THE HON. MRS. P. C. M. NGULUBE IN CHAMBERS
ON 31st March, 2021.**

For the Appellant: Mr. K. Mainga, of Messrs. Milner & Paul Legal Practitioners.

For the Respondent: Ms. C. Sakala, of Mesdames. Theotis Mataka & Sampa Legal Practitioners.

R U L I N G

Legislation referred to:

1. *The Court of Appeal Rules, Statutory Instrument Number 65 of 2016.*

INTRODUCTION

1. This is a ruling on the appellant's application for an order for extension of time within which to file a record of appeal and

heads of argument, pursuant to ***Order XIII Rule 3 of the Court of Appeal Rules***.

BACKGROUND

2. The background to this application is that on 23rd June, 2020, the appellant filed a notice of appeal and a memorandum of appeal against a ruling of the learned District Registrar of the Commercial Division of the High Court at Lusaka. The appellant did not file a record of appeal and heads of argument within the period prescribed by the Court Rules.

APPLICATION BEFORE THIS COURT

3. On 21st September, 2020, the appellant made an application before this court for extension of time within which to file a record of appeal and heads of argument. The application is supported by an affidavit sworn by Counsel for the appellant, Mr. Mainga Katungu.
4. The ground on which the application is anchored is that the offices for the appellant's advocates were temporarily closed on account of a mandatory quarantine that was imposed due to the fact that three cases of Covid-19 were recorded at the law firm. The appellants' advocates had since resumed their operations

and were now ready to file a record of appeal and heads of argument.

5. The affidavit in support of the application was sworn by the appellant's counsel, Mr. Mainga Katungu, who deposed that while counsel were in the process of preparing a record of appeal and heads of argument, a member of staff tested positive for Covid-19 and the law firm was closed from 7th August, 2020 to 21st August, 2020, to avoid the further spread of the virus.
6. It was his evidence that the law firm resumed its operations on 21st August, 2020, but two other members of staff tested positive for Covid-19 and the firm was again temporarily closed up to the 31st of August, 2020. Counsel exhibited notices of temporary closure which Messrs. Milner & Paul Legal Practitioners issued to the courts and other stake holders. The last day on which the appellant was required to file heads of argument was on 24th August, 2020.
7. Mr. Katungu deposed that the failure to file a record of appeal and heads of argument within the prescribed period was neither intentional or deliberate but was due to the Covid19 pandemic which destabilized the operations and prompted the closure of

the law firm. The appellant is desirous of prosecuting its appeal and are therefore seeking leave for extension of time.

OPPOSITION TO THE APPLICATION

8. The respondent countered this application by way of an affidavit in opposition sworn by the respondent's advocate, Ms Chileke Sakala, who deposed that while she was sympathetic to the appellant regarding the difficult situation caused by the Covid-19 health pandemic, the appellant had close to a month to make an application for extension of time from the time its advocates resumed operations. But that the appellant chose to wait until late September, 2020 before it could bring this application.
9. It was her evidence that the Courts had long resumed work during regular working hours and there was no tenable excuse as to why the appellant took about a month to make this application for extension of time, if the appellant was truly desirous of prosecuting its appeal. Counsel stated that the appellant had also delayed to serve the appeal on the respondent after it was filed on 23rd June, 2020 and the appellant had attributed late service to the closure of the firm due to the Covid19 pandemic. That meanwhile the appellant was actively engaged in negotiations with the respondent regarding the

settlement of the judgment sums which were awarded by the court below in this matter. According to her, the delay in presenting this application was inordinate and not indicative of an action by a party which is desirous of prosecuting its appeal.

DECISION OF THIS COURT

10. Counsel for the parties did not file skeleton arguments in respect of this application and I have considered the affidavit evidence before me. The appellant is seeking leave for extension of time within which to file a record of appeal and heads of argument. The power of this Court to extend time is provided in **Order 13 Rule 3(1) of the Court of Appeal Rules**, which states that:

“3 (1) The Court may, for sufficient reason extend the time for –

(a) making an application, including an application for leave to appeal;

(b) for bringing an appeal; or

(c) for taking any step in or in connection with any appeal.”

11. The question I have to determine is whether there is sufficient reason for me to grant the appellant’s application. The basis on which the application has been made is that the law firm of Messrs. Milner & Paul Legal Practitioners, which is representing

the appellant, was temporarily closed on account of a mandatory quarantine that was imposed due to three Covid-19 cases which were recorded at the firm.

12. The record shows that the appellant appealed to this Court on 23rd June, 2020, by reason of which it was required to file a record of appeal and heads of arguments within sixty days from the date of lodging the appeal. There are notices which Messrs. Milner and Paul Legal Practitioners issued to the courts and other stakeholders showing that the firm was closed on two occasions from 7th August 2020 to 31st August, 2020, because some advocates tested positive for Covid19. The last day on which the appellant was required to file the requisite documents was on 24th August, 2020.
13. I have no doubt in my mind that the circumstances given by the appellant constitute a sufficient reason upon which this court can grant an application for leave for extension of time within which to file a record of appeal and heads of argument. Its advocates could not have been expected to file documents during the period that the law firm was closed because there was need to curb the further spread of the Covid19.

14. I have noted that counsel for the respondent has not actually objected to the fact that grounds exist on which the appellant should be granted leave for extension of time. The concern she has raised is that the appellant took long to make this application. Ms. Sakala's contention is that the appellant had close to a month from the time its advocates resumed operations, to make this application, but it waited until late September, 2020 before filing the application. The thrust of counsel's argument is that the delay in filing this application was inordinate and not indicative of an action by a party which is desirous of prosecuting its appeal.
15. The record shows that the appellant filed this application on 21st September, 2020, which was exactly twenty-one days from 31st August, 2020 when the appellants' advocates resumed operations. I therefore take the view that the delay in filing the application for extension of time was not inordinate. There being a sufficient reason on which this application can be granted, and considering that the delay in filing this application was not inordinate, it is my considered view that the appellant must be granted an extension of time within which to file a record of appeal and heads of argument.

16. I accordingly grant the appellant twenty-one days from the date of this ruling to file a record of appeal and heads of arguments, failing which this appeal shall be automatically dismissed.
17. This application is allowed. I award costs to the respondent.



P.C.M. NGULUBE
COURT OF APPEAL JUDGE