

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

Appeal No. 125/2010

(Appellate Jurisdiction)

BETWEEN:

DIPAK KUMAR PATEL

1ST APPELLANT/APPLICANT

YAKUB PATEL

2ND APPELLANT/APPLICANT

AND

DAVID KANGWA NKONDE

RESPONDENT

**Coram: Mwanamwambwa, DCJ, Wood and Malila, JJS
on 20th July, 2017 and 9th August, 2017**

For the 1st Appellant: No appearance

For the 2nd Appellant: Mr. D. K. Kasote, Chifumu Banda &
Associates

For the Respondent: Mr. E. B. Mwansa SC, EBM Chambers

RULING

MALILA, JS, delivered the ruling of the court.

Legislation referred to:

1. *Supreme Court Rules, chapter 25 of the laws of Zambia (White Book, 1999 ed).*

This motion arises in a matter that has been in court in the last two and a half decades, having been commenced on 11th June, 1991. The action has been fraught with remarkable tardiness and has suffered neglect and inattention at every turn attributable to the appellants/applicants. The motion, however, raises the short question whether the dismissal of the appellants/applicants' action by this court for want of prosecution can and should be reversed.

The action was first filed in the Principal Registry as way back as June 11, 1991. It was commenced by Dipak Kumar Patel (the first appellant) against David Kangwa Nkonde (the respondent). The claim was chiefly for specific performance of a contract of sale. The respondent, desirous of defending the action, entered appearance in June, 1991. The appellant/applicant as plaintiff in that action manifested considerable disinterest in proceeding with the prosecution of the action, prompting the respondent (as defendant) to apply to have the matter dismissed for want of prosecution. Four

