

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

CAZ/08/227/2017



B E T W E E N :

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| D. TEMBO HOSPITAL COMPLEX LIMITED | 1ST APPELLANT |
| BISHOP SCOT MWANZA | 2ND APPELLANT |
| LILLIAN MWANZA (Married Woman) | 3RD APPELLANT |
| GETRUDE MWANZA | 4TH APPELLANT |
| RUTH MWANZA | 5TH APPELLANT |
| LASTON MWANZA | 6TH APPELLANT |
| CHOKANGA MWANZA | 7TH APPELLANT |
| (A minor by Bishop Mwanza his next friend) | |
| CHATEKA MWANZA | 8TH APPELLANT |
| (A minor by Bishop Mwanza his next friend) | |

AND

| | |
|------------------|----------------------------------|
| RIDE SIKAONA | 1ST RESPONDENT |
| ATTORNEY GENERAL | 2ND RESPONDENT |

Before Justice F. M. Chishimba in chambers.

For the Appellants : Mr. Mumba of Messrs A.D. Mwansa Mumba & Associates
For the 1st Respondent : Mr. Sitali and Mr. Katolo of Messrs Milner & Paul Legal Practitioners.
For the 2nd Respondent : N/A

R U L I N G

CASES REFERRED TO:

1. Miyanda Vs. Handau [1993-1994] Z.R. 18
2. Beatrice Nyambe Vs. Barclays Bank (Zambia) Limited Plc [2008] ZR 195 Volume 2 (HC)

LEGISLATION AND OTHER WORKS REFERRED TO:

1. The Court of Appeal Act No. 7 of 2016
2. The Court of Appeal Rules, Statutory Instrument No. 65 of 2016

3. The Rules of the Supreme Court of England (White Book) 1999 Edition

The Appellants had filed an application for leave to file the Notice of appeal out of time pursuant to **Order 13 Rule 3 of the Court of Appeal Rules Statutory Instrument number 65 of 2016**, supported by an affidavit. When the application came up for hearing on the 26th of September, 2017, the 1st Respondent raised a preliminary issue, objecting to the Applicants' application. The preliminary issue was made pursuant to **Order 14A of the Rules of the Supreme Court of England (White Book) 1999 Edition**. The Respondents contend that the application for an extension of time within which to file the Notice of Appeal out of time by the Appellants ought to have been made, initially, in the High Court. Upon the sought order not being granted, the Applicants would be at liberty to renew the application before this court.

The applicants relied on the affidavit sworn by its Counsel, Mr. Mumba, dated 28th September, 2017. It was stated that the Applicants had initially made an application for leave to appeal under CAZ/8/196/2017 before Honourable Justice J. Chashi. The application was dismissed in a ruling dated 22nd August, 2017 in which the Judge directed the Applicants to file a

