IN THE SUPREME COURT FOR ZAMBIA **APPEAL No. 98/2015**

HOLDEN AT NDOLA **SCZ/8/121/2015**

(Civil Jurisdiction)

IN THE MATTER OF: **An application by Butler Asimbuyu Sitali to apply for Judicial Review**

IN THE MATTER OF: **SECTION 58 OF THE ANTI-CORRUPTION COMMISSION ACT, ACT NO. 3 OF 2012**

BETWEEN:

BUTLER ASIMBUYU SITALI **APPELLANT**

AND

ANTI-CORRUPTION COMMISSION **RESPONDENT**

Coram : **Hamaundu, Kabuka and Mutuna, JJS**

On 5th December 2017 and 8th December 2017

For the Appellant : **N/A**

For the Respondent : **Mr. B. Chiwala and Mrs. G. Muyunda, Legal Officers for the Respondent**

J U D G M E N T

Mutuna JS., delivered the judgment of the court.

Cases referred to:

1) **R v Inland Revenue Commissioners, Ex parte National Federation of Self Employed and Small Businesses Ltd (1981) 2 ALL ER 93**
2) **Re Secretary of The Home Department, Ex parte Rukshanda Begun (1990) C.O.D. 107**
3) **Ruth Kumbi v Robinson Kaleb Zulu SCZ judgment No. 19 of 2009**
4) **North Western Energy Company Limited v Energy Regulation Board (2010)**
5) **The People v Industrial Relations Court Ex parte Zambia Revenue Authority SCZ No. 6 of 2007**
6) **R v Dairy Produce Tribunal for England and Wales Ex parte Caswell (1989) 3 ALL ER 205**
7) **R v Ashford, Kent JJ, Ex parte Rickey (1955) 1 WLR 562**
8) **Zambia Wildlife Authority, Mukela Muyando, Mubiana Munyinda and African Parks Zambia Limited v Muteeloi Community Resources Board Development Co-operative Society**
9) **C and S Investment Limited, ACE Car Hire Limited and Sunday Maluba v The Attorney General (2004) ZR 216**

Legislation referred to:

1) **Supreme Court Practice, 1999, volume 2**
2) **Anti-Corruption Commission Act No. 12 of 2012**
3) **Criminal Procedure Code, Cap 88**

The Appellant, Butler Asimbuyu Sitali is a legal practitioner by profession and practices as such before the courts of Zambia. In this appeal he seeks to upset the

decision of the Learned High Court Judge, denying him leave to commence an application for judicial review pursuant to Order 53 of the ***Supreme Court Practice (1999) (White Book)*** on the ground that the application contravened the provisions of Order 53 rule 4 sub-rule 1 of the ***White Book*** because it was made out of time. He also seeks to challenge the refusal by the Learned High Court Judge to exercise her discretion to extend time within which to apply for leave to apply for judicial review pursuant to Order 53 rule 4 Sub-rule 1 of the ***White Book***.

The decision of the Learned High Court Judge followed a request by the Respondent's officers to the Appellant that he accompanies them to their office on 24th September 2014 when they found him in his motor vehicle, Chevrolet Captiva ABV1748, (the motor vehicle) at Arcades Shopping Mall car park. When they arrived at the Respondent's offices, the Appellant was shown certain documents which

belong to his former employer Energy Regulation Board, where he had served as Chief Executive Officer, which they alleged he obtained corruptly from his former employer. The Respondent's officers then returned to Arcades Shopping Mall car park to collect the motor vehicle and upon arrival at their offices, informed the Appellant that they had seized the motor vehicle for purposes of using it as evidence in their investigation. They, accordingly produced a seizure document to that effect but no warrant for the seizure was obtained or shown to the Appellant in accordance with section 58 of the ***Anti-Corruption Commission Act.***

Later, on 2nd October 2014, the Appellant was summoned to the Respondent's office where he was arrested and charged with an offence under Section 19(2) of the ***Anti-Corruption Commission Act.*** The allegation leveled against him was that he had corrupted a public

officer to obtain some documents from the Energy Regulation Board, which documents were allegedly found in the motor vehicle. He was later released on bond and directed to appear before the court on 31st October 2014. On that day he was called to the Respondent's office and his bond was extended to 28th November 2014. This pattern of summoning the Appellant to the Respondent's office and extending his bond continued until April 2015. He has to date not appeared before the courts.

Prior to this, the Appellant had on divers days requested the Respondent's officers to furnish him with a copy of the seizure warrant and or release the motor vehicle to him which he would undertake to deliver to them before court hearings, but both requests were denied. This prompted the Appellant to file an application for leave to apply for judicial review pursuant to Order 53 of the ***White Book***, on 31st March 2015. His action was by way of an *ex*

parte summons, in support whereof was an affidavit sworn by himself, notice containing statement pursuant to Order 53 rule 3 of the ***White Book*** and various skeleton arguments. The Respondent's response was by way of an affidavit in opposition and two sets of skeleton arguments.

The Appellant sought leave of the court to commence judicial review proceeding challenging the decision by the Respondent to seize his motor vehicle without a warrant as required under section 58 of the ***Anti-Corruption Commission Act*** and seeking the following reliefs:

1) **An order of certiorari to remove into the High Court for purposes of quashing, the decision of the Respondent to seize the motor vehicle without a warrant as provided for under section 58 of the Anti-Corruption Commission Act;**
2) **A declaration that the decision of the Respondent to seize the Appellant's motor vehicle without a warrant is illegal, unlawful and unjustified;**
3) **A declaration that the decision of the Respondent to seize the Applicant's motor vehicle without a warrant is illegal, unlawful and unjustified and should be reversed as the same was arrived at without justification and in violation of Statutory Procedure stipulated by Section 58 of the Anti-Corruption Commission Act;**

4) **A declaration that the decision of the Respondent to seize the Appellant's motor vehicle without a warrant as required under Section 58 of the Anti-Corruption Commission Act is illegal for being ultra vires because the Respondent has no power under the Act to seize the motor vehicle for investigative purposes or as evidence without first obtaining a warrant issued by a competent authority;**
5) **A declaration that the decision of the Respondent to seize and hold onto the Applicant's motor vehicle without a warrant as required under section 58 of the Anti-Corruption Commission Act for over six months and without submitting the matter to court is an abuse of its statutory authority, and that no reasonable tribunal properly advising itself would act in the manner that the Respondent has acted;**
6) **A declaration that the Respondent's actions have been made in bad faith or for an improper purpose and are therefore an abuse of its statutory powers;**
7) **An order of mandamus compelling the Respondent to release the motor vehicle to the Applicant;**
8) **Damages;**
9) **Exemplary damages against the Respondent to serve as a deterrent against the abuse of its power;**
10) **If leave is granted a direction that such leave should operate as a stay of the decision of the Respondent to seize and detain the Applicant's motor vehicle provided that as and when it may be required to be produced during any court proceedings, the Appellant shall deliver it to the Respondent for that purpose from time to time pending the determination of the matter or further order of the court;**
11) **If leave is granted, a direction that the hearing of the application for judicial review be expedited;**

12) An order for costs occasioned to the Appellant.

The grounds upon which the foregoing remedies were sought were illegality, procedural impropriety, irrationality and or unreasonableness. The first two grounds were based on the contention that the Respondent's actions were carried out in the absence of a warrant for the seizure of the motor vehicle. The third ground was based upon the contention that the Respondent continues to retain possession of the motor vehicle despite its failure to prosecute the Appellant before the court.

The evidence in support of the application revealed the background to the seizure of the motor vehicle by the Respondent's officers and subsequent arrest of the Appellant. It also emphasized that the seizure of the motor vehicle did not have the support of a warrant issued by a competent authority which fact was only revealed to the Appellant on 20th March 2015. This date, it was contended,

is the day when the circumstances upon which the grounds are based arose.

In the skeleton argument, and *viva voce* arguments advanced before the Learned High Court Judge, counsel for the Appellant stated the test which a court should consider in deciding whether or not to grant leave to apply for judicial review by reference to Order 53 rule 14 sub-rule 55 of the ***White Book*** and the cases of ***R v Inland Revenue Commissioners, Ex parte National Federation of Self Employed and Small Businesses Ltd***[1], ***Re Secretary of The Home Department, Ex parte Rukshanda Begun***[2] and ***Ruth Kumbi v Robinson Kaleb Zulu***[3]. He argued that leave should be granted if, on the material placed before the court, there is an arguable case for granting the relief claimed by the applicant. Put differently, the judge must be satisfied that there is a case fit for further investigation at a full *inter partes* hearing. Counsel argued that the facts

presented by the Appellant in the affidavit in support revealed that the motor vehicle was seized on 24th September 2014 by the Respondent's officers without a warrant of seizure and prior to his being charged with a criminal offence. According to counsel, these facts satisfy the test for the grant of leave for judicial review because a reading of section 58 of the ***Anti-Corruption Commission Act*** reveals that a warrant for seizure is a mandatory requirement prior to executing a seizure because the law recognizes the need to protect citizens from overzealous officers of the Respondent who may be tempted to act capriciously. Section 58 of the ***Anti-Corruption Commission Act*** states:

> **"Where in the course of an investigation into an offence under this Act, an officer has reasonable grounds to suspect that any movable or immovable property is derived or acquired from corrupt practices, is the subject matter of an offence or is evidence relating to an offence, the officer shall, with a warrant, seize the property."**

Counsel concluded by setting out the transgressions allegedly committed by the Respondent's officers which, it was contended, proved the three grounds advanced in support of the application.

The affidavit evidence in opposition by the Respondent by one Uccar Chiyuni an investigating officer of the Respondent revealed that on the material day the Respondent's officers searched the Appellant's motor vehicle in his presence. They retrieved various documents which prompted them to seize the motor vehicle for purposes of use as an exhibit in future criminal proceedings against the Appellant. This was in conformity with the provisions of section 23 of the ***Criminal Procedure Code*** and not the ***Anti-Corruption Commission Act***, which does not require a warrant to be issued prior to the seizure of any asset.

In the skeleton arguments and *viva voce* arguments presented before the Learned High Court Judge, counsel for the Respondent began by stating the rationale for leave to be obtained prior to an application for judicial review in accordance with the case of ***North Western Energy Company Limited v Energy Regulation Board***[4]. He argued that the material placed before court by the Appellant revealed that the application is frivolous, vexations or hopeless and as such not fit for further investigation.

The other limb of the Respondent's argument restated the contention that the action it took was pursuant to section 23 of the ***Criminal Procedure Code*** which Act does not require a warrant to be issued prior to seizure of an asset. That the provisions of that Act are to be read with the provisions of the ***Anti-Corruption Commission Act***.

The arguments concluded by contending that the court had no jurisdiction to entertain the application for leave to apply for judicial review because it was made out of time. Counsel stated that in terms of Order 53 rule 4 of the ***White Book***, an application for leave to apply for judicial review must be made promptly or within three months of the occurrence of events complained of. The facts of the case revealed that the circumstances leading to the application for leave arose on 24th September 2014 but the Appellant only made the application well after the expiry of three months. Reliance was placed on the case of the ***People v Industrial Relations Court Ex parte Zambia Revenue Authority***[5].

In reply, counsel for the Appellant argued as follows: the argument that the application was time barred was misconceived because it was presented in the skeleton arguments instead of by way of summons; the grounds for

judicial review did not arise on 24th September 2014 but rather in March 2015 after the Appellant was informed that the seizure of his motor vehicle was effected without a warrant; and, in any event, the court has discretion, where sufficient cause is shown for the delay, to extend time within which to apply. Reliance was placed on the case of ***R v Dairy Produce Tribunal for England and Wales Ex parte Caswell***[6].

After hearing the application, the Learned High Court Judge considered the evidence and arguments and stated the rationale and principles for the grant of leave for judicial review. She then made three crucial findings which are the basis of this appeal. The first was that the grounds for the application for judicial review arose on 24th September 2014 when the Appellant's motor vehicle was seized, therefore, the Appellant was obliged to make the application for leave to apply for judicial review within

three months of that date. Her view was that the contention that the grounds arose on 20th March 2015 is not tenable because the Appellant's evidence revealed that he was aware that the Respondent's officers had no warrant before 20th March 2015.

The second finding she made was that the argument raised by the Respondent of time bar was not misconceived by virtue of the fact that it was raised in the skeleton arguments and not by way of motion because the Appellant had opportunity to respond to it by way of skeleton arguments in reply.

The last finding was that whilst she had discretion to extend time within which an applicant is required to file an application for leave, she could only exercise such discretion upon sufficient cause being shown. As such, an applicant seeking to extend time is obliged to make a formal application to that effect so that the opposing party

has an opportunity to respond to it in accordance with Order 53 rule 14 sub-rule 58 of the ***White Book*** and the decision in the case of ***R v Ashford, Kent JJ, ex parte Rickey***[7]. She found further, that such an application gives the court an opportunity to consider whether substantial hardship or prejudice will be occasioned not only to the other party but the public at large as well. She accordingly held that since no such application had been formally tabled before her she could not entertain it.

The Learned High Court Judge concluded by dismissing the application.

This is what has aggrieved the Appellant and in an effort to remedy the foregoing decision, has launched this appeal advancing six grounds of appeal crafted as follows:

1) **The Learned High Court Judge erred in law and fact when she found that the three month period within which the applicant was required to commence the action started running from 24th September 2015 on the day the motor vehicle was seized and not**

20th March 2015 when the Appellant became aware that the Respondent seized the motor vehicle without a warrant;

2) **The Learned Trial Judge misdirected herself when she held that it did not matter that the Appellant was not aware that the Respondent did not have a warrant at the time of seizure of the motor vehicle on 24th September 2014;**
3) **The Learned Trial Judge misdirected herself when she held that the Appellant must have known that the Respondent's officers did not have a warrant for the seizure before 20th March 2015 because he had requested for the warrant prior to that date;**
4) **The Learned Trial Judge misdirected herself when she rejected the Appellant's evidence which revealed that there was sufficient cause shown for the delay in applying for judicial review;**
5) **The Learned Trial Judge erred in law and fact when she held that it was the Appellant's duty to prove that extension of time within which to apply for judicial review would be detrimental to the good administration when the onus to prove such detriment was the Respondent's, and, which issue in any event had not been raised by the Respondent;**
6) **The Learned Trial Judge erred at law and in fact when she considered the Respondent's supplementary skeleton arguments to impeach the Appellant's application for leave to apply for judicial review because they were irregularly filed and not preceded by summons.**

After considering the record of appeal and arguments filed by counsel for the two parties we are of the firm view that these grounds of appeal raise three issues as follows:

1) **Whether or not the Learned High Court Judge erred when she found that the three month period within which the Appellant was required to commence the action started running on 24th September 2014;**
2) **Whether or not the Learned High Court Judge erred when she refused to exercise her discretion to extend time within which to commence the action;**
3) **Whether or not the application to dismiss the action for being out of time should have been raised by summons.**

Along with these three issues there is another issue which we consider relevant to the determination of this appeal although it was not canvassed before the court below. The issue is whether or not the Respondent's actions being criminal investigations in nature are amenable to judicial review. We are compelled to raise and determine this issue because it is an important one, and though not addressed by the court below, is an issue that has plagued the court below in the recent past in applications before it.

In their arguments, counsel for the two parties have gone to great length in justifying their respective positions

and in doing so have strayed beyond permissible boundaries because they have advanced arguments in respect of the main matter. The Appellant has done this in his heads of arguments filed in support of the appeal which he relied upon entirely in prosecuting the appeal, having filed a notice of non attendance and was, therefore, not represented at the hearing. On the other hand the Respondent through its counsel, Mr. B. Chiwala and Mrs. G. Muyunda, who were present at the hearing, did so through the heads of arguments filed prior to the hearing and *viva voce* arguments during the hearing.

We have on a number of occasions stated that at the stage of applying for leave to commence judicial review proceedings, arguments must only focus on the issue whether or not a case fit for further investigations at *inter partes* stage has been established. The parties are not called upon to attack or justify the actions complained of

by way of arguments for and against the grounds advanced for judicial review. As a result of this, in dealing with the first three issues raised our focus is restricted to the arguments advanced by the parties relevant to an application for leave to apply for judicial review.

We now turn to consider the issues as we have listed them in the earlier part of this judgment.

The first issue relates to the finding made by the Learned High Court Judge that the Appellant was aware of the grounds prompting the application prior to 20th March 2015. In other words, he ought to have filed the application for leave for judicial review within three months of 24th September 2014.

Counsel for the Appellant in advancing arguments in respect of this issue invited us to revisit the affidavit evidence in support of the application for leave to apply for

judicial review which it was contended reveals the number of times the Appellant has called at the Respondent's office for purposes of ascertaining when the matter regarding his criminal prosecution would be laid before the court. That the officers' response has been that he would be informed when the matter would be taken to court and the warrant for the seizure of the vehicle submitted to the court. Further that, the Appellant only discovered on 20th March 2015 that no warrant was obtained by the Respondent's officers prior to seizing his vehicle.

In response counsel for the Respondent argued that there was no need for the Respondent to obtain a warrant prior to the seizure of the motor vehicle because it acted pursuant to the provisions of the ***Criminal Procedure Code***. As such, the three month period in which the Appellant was obliged to file the application for leave to commence judicial review proceedings started running on

24th September 2014. Additionally, Mr. B. Chiwala in the *viva voce* arguments contended that the Appellant is presumed to know the law and, therefore, knew or ought to have known of the existence of the requirement under section 58 of the ***Anti-Corruption Commission Act*** at the time of the seizure of the motor vehicle. And, since no warrant of seizure was availed to him on that day, he ought to have known that the three months for filing an application for leave for judicial review had started running.

We have revisited the Appellant's evidence in the affidavit in support particularly paragraphs 12 to 17 to which we were referred by counsel for the Appellant. What is clear from these paragraphs is that they simply recount the various trips the Appellant made to the Respondent's office for purposes of ascertaining the day he was to appear in court and extension of the bond. The paragraphs make

no mention of when the Appellant became aware that the Respondent's officers had no warrant of seizure at the time of seizing the motor vehicle. Further, we find that there is absolutely no relationship between those various trips and indeed the prosecution of the criminal complaint before the court and knowledge of the existence or otherwise of the warrant as argued by counsel for the Appellant. The arguments to this effect are, therefore, untenable. The position we have taken is that the totality of the evidence reveals that the Appellant knew or ought to have known by 24th September 2014 that there was no warrant for the seizure of the motor vehicle because none was presented to him at the time of seizure of the motor vehicle. The only document presented to him at the time of seizure was a form marked *"Exhibits Received Returned"* and we take the view that at that moment he should have requested for the warrant. Further, the fact that the Respondent's officers

were delaying or reluctant to furnish the Appellant with the warrant during all of those months he called on them should have put him on alert and prompted him to institute the proceedings for leave to apply for judicial review within the prescribed time. This position is reinforced by the fact that the Appellant confirms noticing the lack of a warrant at the time of the seizure of the motor vehicle as is evident from paragraph 27 of the affidavit in support in which he states in part as follows:

> **"... owing to a lack of the warrant at the time of seizure of my car, the Respondent's action is illegal, unlawful ..."**

This statement ties in well with the wording of section 58(1) of the ***Anti-Corruption Commission Act*** which we have reproduced in the earlier part of this judgment which is to the effect that a warrant must be presented at the time of seizure. The relevant portion of the section states that *"... the officer shall, with a warrant, seize the property."*

There can, as a result of this be no seizure of any asset if there is no warrant and the Appellant should have insisted that one was produced at the time of the seizure. Consequently, the Appellant's ground arose the minute that his motor vehicle was seized without a warrant and he ought to have known this as argued by Mr. B. Chiwala and not continued to pursue the warrant and his prosecution. We accordingly do not accept the argument by counsel for the Appellant that we should apply the same reasoning we applied in the case of ***Zambia Wildlife Authority, Mukela Muyando, Mubiana Munyinda and African Parks Zambia Limited v Muteeloi Community Resources Board Development Co-operative Society***[8]. In that case we found that the grounds complained of by the applicant arose when the final agreement was executed as opposed to the memorandum of understanding. We were thus acknowledging the fact that where a decision which it is

sought to impugn is taken merely as part of a process which finally determined an applicant's rights or obligations, then the usual course should be to await the final outcome of the process before applying for leave to move for judicial review. By this decision we were merely emphasizing the fact that the execution of the Memorandum of Understanding in that case was a process leading up to the final decision which aggrieved the applicant and was consummated by the execution of the final agreement. This was in line with the case of ***The State v The Secretary Public Commission and Others Ex parte: Anare Vuniwa***[9] which is a decision of the Figi Court of Appeal and by which we were persuaded. We must state here, in no uncertain terms, that we do not see how these two cases aid the Appellant's case because the facts of the two cases are poles apart from the facts of this case. There was, to our minds, no transitional steps to be taken

in compliance with section 58 of the ***Anti-Corruption Commission Act***, because the wording of the section, as we have stated, makes the existence of a warrant of seizure a condition precedent to the seizure.

Arising from the findings we have made in the preceding paragraph we have no reason to fault the findings made by the Learned High Court Judge. This means that there are no merit in grounds 1, 2 and 3 of the appeal.

The second issue relates to the refusal by the Learned High Court Judge to extend time within which the Appellant was expected to commence the application for leave for judicial review.

The gist of the argument by counsel for the Appellant was as follows: despite there being sufficient evidence on record showing why he did not make the application on

time, the Learned High Court Judge still refused to grant the extension; there was no need for him to make a formal application for an extension of time because the objection in regard to the delay was raised by the Respondent in the further skeleton arguments and not by way of a motion; since the Respondent was not required to file a motion before raising objection, the Appellant should not have been subjected to the need to file a motion for extension of time; and on the authority of the case of ***R v Dairy Produce Tribunal for England and Wales ex parte Casewell***[6] the Learned High Court Judge was within her powers to consider the application for an extension and grant it.

In response counsel for the Respondent argued as follows: leave to apply for an extension of time within which to file an application for leave to commence an action for judicial review should be specifically sought; there was no

such application tabled before the court because the documents filed related to the application for leave and not extension of time; and, the Appellant should have raised the objection to the filing of further skeleton arguments in which the objection that the application was time barred was contained in the court below and not on appeal.

In regard to the first argument, counsel for the Appellant contended that the Appellant had armed the Learned High Court Judge with sufficient evidence and arguments as contained in the skeleton arguments to justify the grant of an extension of time. Counsel contended further that the affidavit evidence reveals the number of times the Appellant visited the Respondent's office on a monthly basis for six months in which time the Respondent's officer's misrepresented to him that they had a warrant for the seizure of the motor vehicle. The said evidence, it was contended, has not been challenged.

The provisions of the ***White Book*** which relate to extension of time within which to file an application for leave to commence an application for judicial review are Orders 53 rule 4 sub-rule 1 and 53 rule 14 sub-rule 58. The former states as follows:

> **"An application for leave to apply for judicial review shall be made within three months from the date when grounds for the application first arose unless the court considers that there is good reason for extending the period within which the application shall be made."**

While the latter states in part as follows:

> **On the other hand, the Court has power to extend time for applying for leave to move for judicial review, but only if it considers that there is "good reason" for doing so ... where an application to extend time is made under R.4 notice thereof must be given to the person who will be respondent to the motion ..."**

What is clear from the foregoing Orders is that: the court has discretion to extend time within which to apply for leave for judicial review; such extension must be preceded by an application to that effect by an applicant, which application must be served upon the respondent;

and, it is in the entire discretion of the court to extend time where it finds that there is good reason to do so.

The facts of this case as set out in the earlier part of this judgment reveal that the Appellant did not lay before the Learned High Court Judge a motion to extend time. Our reading of the Orders referred to earlier reveals that an application for extension of time with service of same on the party opposite is a mandatory requirement if a judge is to consider it. Lord Goddard C.J., had opportunity to address this point in the case of ***Regina v Ashford, Kent, Justices Ex parte Rickey***[7] which is referred to under Order 53 rule 14 sub-rule 58, when he had the following to say:

> **"The court has power of course, to extend the order, and the present case is one which it would be right to apply for the order to be extended. But where a person intends an extension of time he must give notice to the person whom he would serve in the ordinary way as one who would be affected if the order challenged were quashed, that he intends to apply for an extension because the**

person affected has a right to be heard and to object to such an extension. He very likely has what I will call a vested interest in the upholding of the order. In the same way as if you go to the Court of Appeal out of time you have to give notice of motion for the time to be extended as you have to do so in this court when justices have not stated a case within the requisite time, so, if you are going to move for certiorari out of time, you must give notice to the person who would be made in the ordinary way a respondent to the motion in order that he may be heard as to whether or not it is a fit case in which to extend the time ..."

We are inclined to adopt the reasoning by Goddard C.J., especially that he drew an analogy for the need for a formal application to the practice adopted in our courts where an appeal is out of time. This is the case because any application that is out of time and is tabled before the court without leave being sought raises jurisdictional issues and the court is precluded from adjudicating upon it. We accordingly find that the Learned High Court Judge did not err at law when she found that there was need for the Appellant to file a motion to extend time. Further, since our finding is that it is a mandatory requirement which

touches on the jurisdiction of the court, even where there are good and compelling reasons the court will not grant the extension in the absence of a formal application being made.

We also do not accept the argument advanced by counsel for the Appellant that the Learned High Court Judge was obliged to consider the extension in the absence of a motion because the Respondent raised the objection in the skeleton arguments and not by way of a motion. The argument is untenable because what the Respondent did in raising the objection was to alert the court of the irregularity of the proceedings before it relating to a jurisdictional issue. Counsel, in this regard, argued that we stated in the ***Zambia Wildlife Authority and others v Mteeloi Community Society*** case that an applicant cannot impeach an application for judicial review by way of a preliminary application.

Before we address the argument by counsel, it is important that we set out the events that occurred in the ***Zambia Wildlife Authority*** case that led us to make the observations we have referred to in the preceding paragraph. In that case the applicants filed an application for leave to commence an action for judicial review which was considered by the court below and granted. Following the grant of leave, the applicant filed the application for judicial review and prior to its hearing, the Respondent filed a notice of intention to raise preliminary issue in which it sought to challenge the grant of leave to commence the action for judicial review. In dismissing the preliminary application we were mindful of the fact that a person who is aggrieved with the grant of leave to commence an action for judicial review can resort to applying to discharge the grant of leave by way of summons and supporting affidavit, pursuant to Order 53 rule 14

sub-rule 62 of the ***White Book***. Thus, an applicant cannot do so by way of notice of intention to raise preliminary issue against the application for leave and in doing so seek to impeach the application for judicial review after leave had been granted as was the case in that matter.

The explanation we have given in the preceding paragraphs shows that the Appellant's arguments are misplaced in view of the fact that in this case leave to apply for judicial review had not been granted which meant that there was no application for judicial review pending before the Learned High Court Judge which the Respondent sought to impeach by raising the objection of time bar.

As a result of our findings in the preceding paragraphs we find no merit in grounds 4, 5, and 6.

We now turn to consider the last issue which is a determination of whether or not the Respondent's actions

are amenable to judicial review. By this we mean, can the Appellant arrest the criminal investigation launched by the Respondent against him and the consequential seizure of the motor vehicle. This is a burning issue because in the reliefs that the Appellant sought there were prayers for: quashing the decision by the Respondent to seize the motor vehicle; declaration of the action as being illegal, unlawful and unjustified; and an order for the return of the motor vehicle.

In effect, when the Appellant sought leave to apply for judicial review he sought, in the final analysis, to arrest the criminal proceedings that the Respondent had launched against him. Should the Learned High Court Judge, as a consequence, not have considered this in her consideration of whether or not to grant leave?

We have in the past held that civil proceedings cannot be used to arrest criminal investigations. This is in line

with our decision in the case of ***C and S Investment Limited, ACE Car Hire Limited and Sunday Maluba v The Attorney General***[10] where the facts of the case were on all fours with the facts of this one and reliefs sought identical. This case was, therefore, not entitled to enjoy the benefit of the grant of leave, even assuming it was filed within time because its effect was to stifle the criminal investigations.

This marks the end of our consideration of this appeal which we find to be totally bereft of merit. We accordingly, dismiss it with costs, to be taxed in default of agreement.

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E.M. HAMAUNDU
SUPREME COURT JUDGE

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J. K. KABUKA
SUPREME COURT JUDGE

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N.K. MUTUNA
SUPREME COURT JUDGE