

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

CAZ/08/107/2017

BETWEEN:
MBITA CHITALA



APPELLANT

AND

ATTORNEY GENERAL

1ST RESPONDENT

GEORGE MWAMBAZI

2ND RESPONDENT

Before the Hon. Mrs. Justice J.Z. Mulongoti
in Chambers on the 15th day of January, 2018.

For the applicant:

Mr. L Chiteta Lemba of David Oliver Sakala & Co

For the 1st respondent:

N/A

For the 2nd respondent:

Mr. V. Oputa & Ms. S. Mulomba of Theotis Mataka & Sampa Legal Practitioners

R U L I N G

Cases cited:

- 1. Stanbic Bank Zambia Limited v. Savenda Management Services Limited (2016/CAZ/08/040)*
- 2. Nahar Investment Limited v. Grindlays Bank International (Zambia) Limited (1984) Z.R. 81 (S.C.)*
- 3. Twampane Mining Co-operative Society Limited v. E and M Storti Mining Limited (2011) ZR 67 Vol. 3*

Legislation referred to:

- 1. Court of Appeal Rules, Statutory Instrument No. 65 of 2016*

This is the ruling on the applicant's application for an order for leave to extend time within which to file a record of appeal.

At this stage, it is necessary to say a little about the background of the matter. The applicant commenced an action by way of petition in the High Court against the respondents. However, before the petition was heard, the respondents raised preliminary issues before the Deputy Registrar on grounds that the action was wrongly commenced and an abuse of court process. The Deputy Registrar allowed the application and dismissed the action, which prompted the applicant to lodge an appeal to a High Court Judge at Chambers. On 19th April, 2017, the High Court ruled that the action was incompetently before court and *res judicata* because the same issues as between the same parties had been dealt with in another matter which concluded by way of a consent order. The matter was then dismissed with leave to appeal. Discontented with the ruling of the High Court, the applicant lodged an appeal to this Court on 4th May, 2017 but failed to file the record of appeal within the stipulated time, hence the current application.

The application is by summons and supporting affidavit made pursuant to Order XIII rule 3 sub-rule (2) of the Court of Appeal Rules (CAR). The affidavit is sworn by the applicant, Mbita Chitala. The applicant deposed that an application was made to the Assistant Registrar of the High Court on 8th May, 2017 for a copy of the notes of the proceedings in the High Court evidenced by the letter marked "MC3" exhibited in the affidavit. However, he only received the proceedings in late August, 2017. This made it difficult for him to prepare the voluminous record of appeal which was in excess of 450 pages. He further deponed that the respondents will not

