

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

**CAZ/08/259/2017**

**BETWEEN:**

**FREDRICK MUNGANYA KAMAYA**

**AND**

**GALAUNIA FARMS LIMITED**



**APPELLANT**

**RESPONDENT**

**Before the Hon. Mrs. Justice J.Z. Mulongoti**  
**in Chambers on the 16<sup>th</sup> day of February, 2018.**

*For the applicant:*

*Ms. O. Zulu of Mesdames Mushipe & Associates*

*For the respondent:*

*Mr. M. Ndalameta of Musa Dudhia & Co*

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## **R U L I N G**

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**Cases cited:**

1. *Revici v. Prentice Hall Incorporated and others* (1969) 1 ALL ER 773

**Legislation referred to:**

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

This is the ruling on the applicant's application for extension of time within which to file the Record of Appeal.

At this stage, it is necessary to say a little about the background of the matter. The applicant had applied for special leave for review of a ruling of the High Court dated 30<sup>th</sup> November, 2016. On 29<sup>th</sup> March, 2017 the High Court dismissed the application for lack of merit. Leave to appeal was not granted. Upon application, on 2<sup>nd</sup> May, 2017, leave was granted to appeal

within 30 days failing which the application would stand dismissed. The applicant failed to comply with this Order. On 7<sup>th</sup> June, 2017, he applied to restore the application for leave to appeal to active cause list and to extend time to appeal. On 13<sup>th</sup> September, 2017, the High Court judge heard the application for review by invoking Order III rule 2 of the High Court Rules. The judge reviewed the Order of 2<sup>nd</sup> May, 2017 and extended the time within which the appellant could appeal by 14 days. The record shows that the applicant only filed the Notice and Memorandum of Appeal on 25<sup>th</sup> September, 2017 but failed to file the Record of Appeal within 60 days, hence the application before me.

The application is made by Notice. It is supported by an affidavit sworn by Martha Mushipe, the applicant's counsel. The gist of her affidavit is that the applicant failed to file the Record of Appeal within 60 days from 25<sup>th</sup> September, 2017 because the respondent delayed to file a Notice of Address. This is despite having served the appellant with the Notice and Memorandum of Appeal. It was further deposed that the respondent only filed the Notice of Address on 20<sup>th</sup> November, 2017 and served it on the appellant on 22<sup>nd</sup> November, 2017. The applicant's deadline was 24<sup>th</sup> November, 2017. In consequence, the applicant failed to file the Record of Appeal within the stipulated time because the record would have been incomplete without the respondent's Notice of Address. And that the failure to file the Record of Appeal on time was not as a result of inordinate delay or blatant disregard of the rules of court because the failure was caused by the delayed Notice of Address. The draft Record of Appeal was exhibited as "MM/1".

The respondent did not file an affidavit in opposition.

