

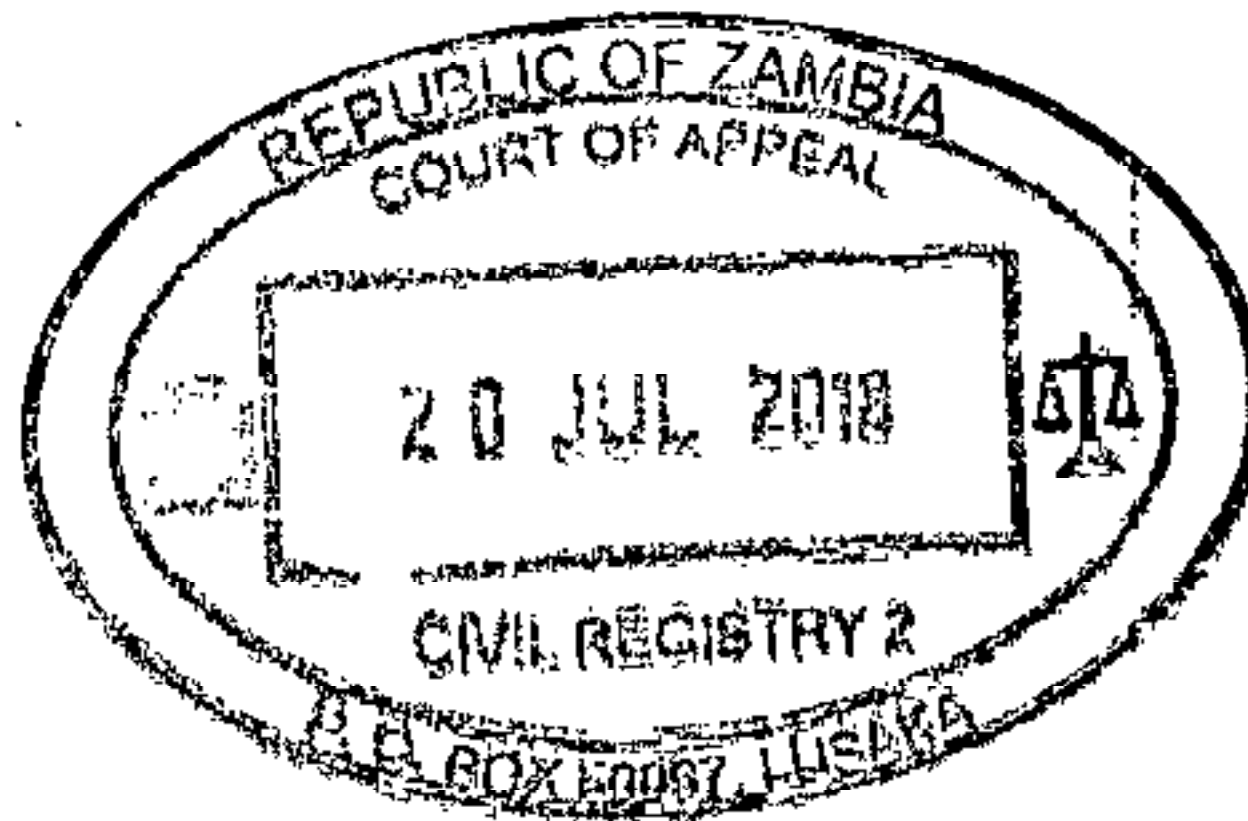
**IN THE COURT OF APPEAL OF ZAMBIA      APPEAL NO. 30/2017  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)**

**BETWEEN:**

**MICHAEL ROBERT JONES**

**AND**

**SONS OF THUNDER LIMITED**



**APPELLANT**

**RESPONDENT**

**Before the Hon. Mrs. Justice J.Z Mulongoti  
in Chambers on 20<sup>th</sup> July, 2018**

*For the appellant:                      Ms. I. Suba of Suba, Tafeni & Associates*

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**RULING**

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**Legislation referred to:**

- 1. The Legal Practitioners Act, Chapter 30 of the Laws of Zambia*
- 2. The High Court Rules, Chapter 27 of the Laws of Zambia*
- 3. The Rules of the Supreme Court, 1999 edition (White book)*
- 4. Court of Appeal Rules, Statutory Instrument No. 65 of 2016*

The ruling stems from an ex-parte application by the law firm of Messrs Suba, Tafeni and Associates for an order for leave to refer a bill of costs to taxation on solicitor party basis, out of time. The application is made pursuant to Order VII rule 1 (1) and (2), Order XIII rule 3, Order XII rule 2 and 3 of the Court of Appeal Rules (CAR)

read together with Order 62 rule 15 of the Rules of the Supreme Court of England, 1999 edition.

The grounds upon which the application is premised are contained in the affidavit in support dated 14<sup>th</sup> June, 2018 deposed by Mulekwa Gordon Numbwa, a lawyer in the firm of Messrs Suba, Tafeni and Associates who were the appellant's advocates during the hearing of the Appeal No. 30 of 2017 which has given rise to this application. He averred that on 14<sup>th</sup> September, 2017, the Court of Appeal passed Judgment in the said appeal which was between the appellant, Michael Robert Jones, and the respondent, Sons of Thunder Limited. The Court of Appeal ordered each party to bear own costs. After Judgment, the law firm engaged its client, Michael Robert Jones, (appellant) to recover legal fees incurred in respect of the appeal but to no avail. The law firm and the appellant failed to reach an agreement on the legal fees and the negotiation protracted such that the law firm could not file the application to refer bill to taxation on time, hence the present application for extension of time. It was further deposed that no prejudice will be occasioned to the respondent if the application is granted.

At the hearing, Ms. Suba, appeared on behalf of the firm. She relied on the affidavit in support and highlighted three points. First, that the Court of Appeal ordered each party to bear own costs. Second, that a bill was drawn and served on the appellant. Third, that the appellant has refused to pay the legal fees.

I have considered the affidavit evidence and the legislation on which the application is premised. From the outset, I wish to point out that the application is improperly before me and untenable at law as the Court of Appeal lacks jurisdiction to deal with the matter.

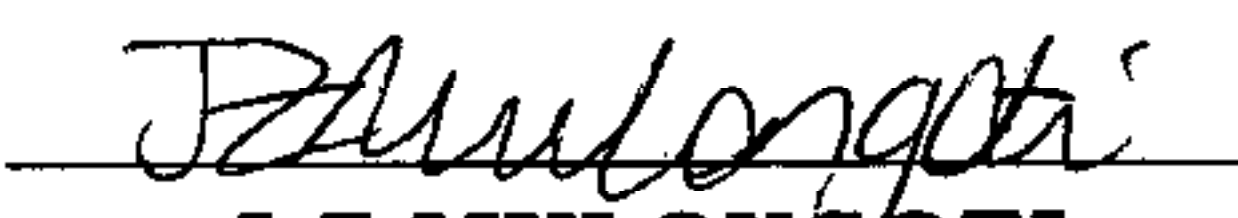
Essentially, the firm wishes to recover their legal fees for services rendered to their client, Michael Robert Jones, the appellant in respect of the appeal No. 30 of 2017.

Unfortunately, the course of action undertaken by the firm to seek leave to refer the matter to taxation out of time is misconceived. The correct procedure for the recovery of fees is as set out in the Legal Practitioner's Act and the High Court Rules as read with Order 62 of the Rules of the Supreme Court, 1999 edition. It is noteworthy that the Court of Appeal did not make any order for costs in favour of the law firm pursuant to which costs may be taxed. The judgment making the order referred to by Ms. Suba is not exhibited in the supporting affidavit. However, the affidavit in support has disclosed that the Court of Appeal ordered each party to bear own costs. That means each party needed to settle their respective bills with their advocates without the involvement of the other. It was then up to Ms. Suba's law firm to issue a bill to their client and demand payment and after 30 days if the client failed to make payment, then their option was to commence an action in the High Court to recover the

fees as provided by section 83 of the Legal Practitioners Act and Order L of the High Court Rules.

Further, although Order L rule 4 seems to suggest that a bill may be referred to taxation by the practitioner making a demand after expiry of one month, reference to court, means the High Court and not the Court of Appeal because 'court' is defined in the High Court Act as High Court. Consequently, this court does not have jurisdiction to entertain the application before it. The application is, therefore, misconceived and I accordingly dismiss it.

Delivered at Lusaka this 20<sup>th</sup> day of July, 2018

  
**J.Z MULONGOTI**  
**COURT OF APPEAL JUDGE**