

IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 93 OF 2006

HOLDEN AT NDOLA AND LUSAKA

(CIVIL JURISDICTION)

BETWEEN:

BANK OF ZAMBIA

APPELLANT

AND

STEVEN MUKENA KONGWA

RESPONDENT

CORAM: Lewanika, DCJ., Silomba and Mushabati, JJS.

On 4th September, 2007 and 24th September, 2007.

For the Appellant: G.C. Mulenga – Legal Counsel.

For the Respondent: N. Sipalo of Ngenda Chambers.

R U L I N G

Mushabati, JS., delivered the Ruling of the Court.

This is an appeal against the refusal by the High Court to grant leave to the appellant to lodge an appeal out of time. When the matter came up for hearing, counsel for the appellant applied for an adjournment.

We refused to grant the application and promised to give our reasons later for our refusal and we are now doing so.

When the lower court refused to grant leave to the appellant to appeal to the Supreme Court out of time, the appellant should have renewed his application before a single judge of this Court in terms of Section 24 (1) (e) of Supreme Court Act Cap. 25. This Sub-Section reads: ***No Appeal shall lie from an order made in Chambers by a Judge of the High Court or from an interlocutory order or interlocutory judgment made or given by a Judge of the High Court, without the leave of the Judge or, if that has been refused, without the***

leave of a Judge of the Court,.....

The appellant filed an application for leave to appeal out of time before a single judge of the Court but the application was not heard. The appellant decided to file his appeal, against the refusal, to the Court without obtaining leave to do so.

The application for an adjournment was objected to by the respondent arguing that the main appeal before us was incompetent.

We declined to grant the application for an adjournment because of the view we held in this matter.

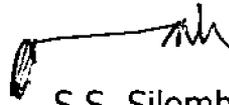
Our well considered view was that the application for adjournment was not going to serve any purpose. We could not ignore the fact that the appellant had an application for leave to appeal out of time pending before a single judge of the Court.

The ruling appealed against was made in Chambers by a High Court Judge. In terms of Section 24 (1) (e), the appeal before us was incompetent for lack of jurisdiction. We therefore, made an order declining to entertain the said appeal against the refusal by the High Court to grant leave to the appellant to appeal out of time. We ordered that an appropriate application be made before the right forum.

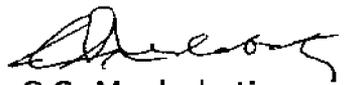
The appeal before us is incompetent and so we decline to entertain it for the reasons given above. The costs occasioned in these proceedings before us shall, in any event, be borne by the appellant.



D.M. Lewanika
DEPUTY CHIEF JUSTICE



S.S. Silomba
SUPREMECOURT JUDGE



C.S. Mushabati
SUPREME COURT JUDGE