

IN THE SUPREME COURT FOR ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

SCZ/8/116/2015

BETWEEN:

JEFF SIMPSON MUSONDA

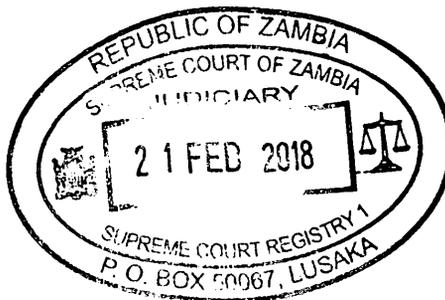
AND

MARY ALICE LLOYD

MARY MUKAJEKA TRIPLETT

LLOYD (Administrators of the estate of Peter

David Lloyd, deceased)



APPELLANT

RESPONDENT

Coram: Hamaundu, Wood and Malila, JJS

On 23rd February, 2017 and 20th February, 2018

For the appellant : Mr T. Chali, Messrs H.H. Ndhlovu & Co

For the respondent : Mr G. Pindani, Messrs Chonta, Musaila
and Pindani, Advocates

JUDGMENT

HAMAUNDU, JS, delivered the Judgment of the Court.

Cases referred to:

**Phillip Mutantika and Mulyata Sheal, S. v Kenneth Chipungu, SCZ
Judgment No. 13 of 2014**

The appellant by this motion seeks to move the full bench of this court to grant him an extension of time within which to file his record of appeal. This motion comes against the following background:

Being dissatisfied with a judgment of the High Court, the appellant filed a notice of appeal in this court on 22nd February, 2016. Realising that he might not be able to file his record of appeal within the 60 days stipulated by the rules, the appellant, on 18th April, 2016, filed before a single judge of this court an application for extension of time within which he could file his record of appeal. Hearing of that application was set for 5th May, 2016. When that day arrived, neither party appeared before the single judge to argue the application. The single judge struck the application off the cause list. The appellant applied to restore it, and was successful. A new date of hearing was fixed and set for 20th June, 2016. When that day came, neither party, again, appeared before the single judge. This prompted the single judge to dismiss the application, entirely, for want of prosecution.

The respondent then went back to the High Court and filed a writ of possession. The appellant came back to the single judge of this court and applied to stay execution of the High Court Judgment.

It then transpired that the appellant had never applied before the High Court to stay its judgment. The single judge of this court rejected the appellant's application to stay execution of the High Court Judgment on the ground that, as matters stood then, there was technically no appeal before this court since the appellant had not renewed before the full bench his application for extension of time to file his record of appeal.

The appellant engaged new advocates who filed this motion before us. The appellant then went back before the single judge and renewed his application to stay the judgment of the High Court. The single judge still rejected the application; this time on the ground that she did not see any prospects of this motion succeeding. The appellant proceeded with the motion and is now asking us to stay execution of the High Court judgment, should this motion succeed.

Mr Chali, learned counsel for the appellant argued that his client was now in this unenviable position due to the fault, entirely, of his previous advocates who failed to attend court. However, counsel urged us not to bar his client from being heard on his appeal merely on account of the fault of his previous advocates, arguing that doing so would be an injustice on his client. While conceding that the

previous advocates were acting as agents of his client, counsel argued that such a relationship should only be attributed in circumstances where the advocate is prosecuting his client's case. In this case, counsel argued, the previous advocates failed to prosecute the client's case altogether. We were, therefore, urged to give the appellant a chance to prosecute his appeal. We were also urged to condemn the previous advocates in costs; and not the client.

In response, Mr Pindani, learned counsel for the respondent, argued that according to **Rule 71(2)** of the **Supreme Court Rules, Cap 25** of the **Laws of Zambia**, a matter that has been struck out may only be restored upon sufficient reasons being furnished. Counsel argued that laying blame on the appellant's previous advocates is not a sufficient reason to restore the application in this case because the appellant has a remedy available to him; and that is to sue his previous advocates for negligence.

We have considered the arguments advanced on both sides. From the background that we have outlined above, there is no doubt that there was an exhibition of lack of seriousness on the part of the appellant and his advocates in prosecuting the application to extend time to file the record of appeal. The only question before us is

whether or not we should heap the blame for that conduct on the previous advocates and then give the appellant another chance to prosecute his appeal.

It is a cardinal principal of our legal practice that the lawyer is the alter ego of his client. We have said before, for example in the case of **Phillip Mutantika & Another v Kenneth Chipungu**, that the relationship between a party and his lawyer is private and of no concern to the court. We said in that case that the incompetence or negligence of a party's advocate was not a sufficient ground for restoring the appeal that had been dismissed.

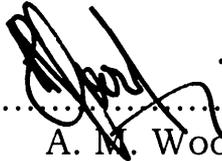
We maintain the same position in this case.

If what the appellant has averred in his affidavit is the correct position, then this is a typical case of professional negligence on the part of the appellant's previous advocates. He, therefore, ought to be seeking redress in that regard. Otherwise, from our point of view, there was a lack of seriousness on the part of the appellant and his advocates; and this justified the dismissal of the application. We do not find any good ground to set aside the order dismissing the application.

This motion, therefore, is without merit. It stands dismissed with costs to the respondent.



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E. M. Hamaundu
SUPREME COURT JUDGE



.....
A. M. Wood
SUPREME COURT JUDGE



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~~Dr. M. Malila, SC~~
SUPREME COURT JUDGE