

**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

**2019/HP/A31**



BETWEEN:

**MUNDIA MUNDIA**

**APPELLANT**

AND

**BENJAMIN PHIRI**

**RESPONDENT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 29<sup>th</sup> DAY OF  
JANUARY, 2020**

*For the Appellant : in person*

*For the Respondent : Mr G. Lungu, Muleza Mwiimbu & Company*

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## **J U D G M E N T**

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LEGISLATION REFERRED TO:

**1. The Subordinate Court Act, Chapter 28 of the Laws of Zambia**

This is an appeal against the decision of the Subordinate Court of the first class, sitting at Lusaka which was delivered on 17<sup>th</sup> April, 2019. The facts which are not in dispute are that the respondent, as plaintiff sued the appellant on 19<sup>th</sup> February, 2019 by writ of summons, claiming;

- 1. An order that the plaintiff be given back sixty eight (68) wrapping films by the defendant.*

2. *In the alternative, immediate payment of K18, 600.00 being the value of the said wrapping films.*
3. *Compensation for loss of business.*
4. *Costs.*
5. *Any other relief that the court may deem fit.*

In the judgment delivered, the trial court noted that the defendant had failed to tell the court the reasons for his failure to pay, stating that he just wanted someone to work out his share. The court further found that it was the duty of the defendant to come up with what he believed he was entitled to, before he could reject the plaintiff's claim. That in view of the fact that the defendant had failed to work out what he owned, and he had failed to give reasons why he was refusing to hand over the wrapping films, the plaintiff's claim was dismissed with costs.

Dissatisfied with that judgment, the appellant filed a notice of appeal on 23<sup>rd</sup> May, 2019, advancing the following grounds of appeal;

1. *The defendant is dissatisfied with the entire judgment dated 17<sup>th</sup> April, 2019.*
2. *That there are special circumstances rendering execution of judgment inexpedient as the defendant has a good chance of succeeding on appeal.*
3. *The defendant was not given proper chance to explain his position on the matter.*

On 18<sup>th</sup> September, 2019, the appellant applied ex-parte to file further grounds of appeal, which was granted on 26<sup>th</sup> September, 2019, and

orders for directions were issued with regard to the filing of the heads of arguments. The further grounds of appeal are that;

1. *The Learned Trial Magistrate erred by holding that the Appellant herein failed to tell the court the reasons for his refusal.*
2. *The learned trial Magistrate erred by holding that the appellant had failed to work out what he owns and failed to give reasons why he was refusing to hand over the sixty eight (68) wrapping films.*

The appellant filed his heads of arguments on 10<sup>th</sup> October, 2019, while the respondent filed his on 23<sup>rd</sup> October, 2019. Before I even consider the heads of argument, I note that judgment in this matter was delivered on 17<sup>th</sup> April, 2019 and the notice of appeal was filed on 23<sup>rd</sup> May, 2019.

Section 28 of the Subordinate Court Act, Chapter 28 of the Laws of Zambia provides as follows;

***“28. (1) An appeal shall lie to the High Court from any judgment, order or decision of a Subordinate Court whether interlocutory or final:***

***Provided that no appeal shall lie except by special leave of the Subordinate Court, or of the High Court, from an order made ex parte or by consent, or as to costs only”.***

Order XLIV of the rules under the Act provides that;

***“3. (1) Every appellant shall, within thirty days of the date of any final judgment or decision against which he intends to appeal, or, in the case of any interlocutory decision against which he intends to appeal, within fourteen days of the same-***

***file with the clerk of the court and serve upon the other party or parties to the suit notice of his intention to appeal;”***

Therefore, a notice of appeal against a judgment of a Subordinate Court has to be filed within (30) days of the judgment, and where the thirty (30) days after the judgment elapses, an appellant must apply for special leave to appeal. In this matter, the appeal was lodged outside the thirty (30) days after the judgment was delivered, and no special leave to appeal was applied for and granted.

As such, the appeal is irregularly before me, and I set it aside, with costs to the respondent to be taxed in default of agreement. Leave to appeal is granted.

**DATED AT LUSAKA THIS 29<sup>th</sup> DAY OF JANUARY, 2020**

*S. Kaunda*

**S. KAUNDA NEWA  
HIGH COURT JUDGE**