ZAMBIA TELECOMMUNICATIONS COMPANY LIMITED *v* MUYAWA LIUWA.

Supreme Court
Sakala, Chirwa and Chibesakunda J.J.S.
20th February, 2002 and 21st June, 2002
(SCZ Judgment No. 16 of 2002).

Flynote

Civil Procedure – Appeals - Application or motion from single Judge to Supreme Court – Whether an appeal or renewal.

Headnote

The short facts of this motion were that the applicant who appeared in person applied to a single judge to dismiss the appellant's appeal for want of prosecution. The argument advanced before a single Judge was that the respondent had been granted leave to lodge the record of appeal within 60 days. The respondents argument before the single Judge was that the 60 days meant calendar days which included Saturday, Sunday and Public holidays. Suffice to mention that this position taken by the appellant was strongly opposed by counsel who appeared for the respondent who in his submissions appeared to suggest that the 60 days excluded public holidays. He also pointed out that the failure to lodge the record of appeal within 60 days had been caused by difficulties in procuring the record of proceedings before the High Court. A single Judge of the Supreme Court refused the applicant's application to dismiss the appeal for want of prosecution and hence the renewal of the application to the full court, which application he styled as an appeal.

Held:

(i) Litigants proceed from a single Judge of the Supreme Court not by way of appeal but by way of renewal of an application

(ii) In calculating the period in which the record of appeal is to be lodged, Saturdays, Sundays and Public Holidays are excluded.

Legislation referred to:

Supreme Court Act Cap 25 s. 4

Work referred to:

Order 3 Rule 2 (5) of the Rules of the Supreme Court (White Book)

P. Kasonde, Legal Officer for Zambia Telecommunications Company Limited for the appellant.
For the respondent In person.

Judgment

SAKALA J.S. delivered the Judgment of the Court:

Aggrieved by the decision of a single Judge refusing the appellant's application to dismiss the appeal for want of prosecution, the appellant who appeared in court in person both here and before a single Judge renewed his application to the full court which application he styled as an appeal.

In passing and at the outset, we want to state here for the benefit of litigants and advocates, who appear before judges of this court at Chambers, that when aggrieved, or dissatisfied by any decision of a single Judge of this court, they come to a full court by way of the application or motion and not by way of an appeal. This is so because in terms of Section 4 of the Supreme Court Act, Cap. 25 of the Laws of Zambia, a single judge of the court may exercise any powers not involving the decisions of an appeal or a final decision in the exercise of his original jurisdiction. Thus, in criminal matters, if a single Judge refuses an application, the person aggrieved by the refusal is entitled to renew that same application to the full court and in civil matters and order direction or decision made by a single Judge may be varied, discharged or reversed by the full court. It is precisely for this reason that a single Judge may sit on the renewed application which was dealt with by himself or herself because the renewed application is not an appeal. It is also for that very reason that we refused the applicant's objection to a member of this panel from sitting on this renewed application.

When we heard this motion, we refused it and indicated that we shall give our reasons later in a written ruling. We made no order as to costs. We now give our reasons.

The short facts of this motion were that the applicant who appeared in person applied to a single Judge to dismiss the appellant's appeal for want of prosecution. The argument advanced before a single Judge was that the respondent had been granted leave to lodge the record of appeal within 60 days. The respondent's argument before the single Judge was that the 60 days meant Calendar days which included Saturdays, Sundays and public holidays. Suffice it to mention that this position taken by the appellant was strongly opposed by counsel who appeared for the respondent who, in his submissions, appeared to suggest that the 60 days excluded public holidays, but pointed out also that failure to lodge the record of appeal within 60 days had also been caused by difficulties in procuring the record of proceedings before the High Court necessitating him writing the Clerk of Court. The other reason given was that the record of appeal had been delayed because of the numerous applications by the applicant. The single judge considered the arguments and made the following observations:-

"My interpretation of the rule is that non working days are not included in calculation as lodging of documents can only be done on working days. I would, therefore, basing it on that conclude that the extended time had not expired. Secondly, I have looked at the notes of the court's sitting and the ruling made by the learned Judge. There is no time stipulated in the original order. The signed order, on the other hand, states sixty days. With that confusion, this court would find difficulties in granting the application to dismiss the appeal as the benefit of the doubt would be given to the appellant. Thirdly, although the courts do not make a habit of depriving a successful litigant of the fruits of judgment except in special circumstances but where there are issues which must be fully adjudicated and there is no prejudice to be occasioned to the respondent by allowing the appellant to defend the claim, the action must be allowed to be heard in full."

The single Judge rejected the application to dismiss the appeal and ordered the appellant to file the record within 14 days and that failure to do so would result in the appeal being dismissed. The appellant filed a very detailed notice of motion in which he cited at great length

the single Judge's ruling. He also cited a number of authorities of this court as well as statutes. The gist of the major ground of the motion was that the single Judge was wrong in law in holding that the 60 days stipulated under rule 4 of the Supreme Court are exclusive of Saturdays and Sundays and public holidays. There were also other grounds in support of the motion criticizing the learned Judge's approach to the order made by the trial court. There were further grounds criticizing the single Judge's acceptance of the respondent's arguments that they had difficulties to obtain records of proceedings before the applications by the respondent.

Another ground attacked the learned trial Judge as having demonstrated a high degree of bias and discrimination against the appellant. Generally, the applicant was totally dissatisfied with the ruling of the single Judge. The motion was supported by an affidavit. On account of the emotional manner in which the motion and the affidavit in support were drafted, we wish to make the point that litigants or advocates need not be insolent even where a point is well taken. In the instant case, the sole issue was whether the 60 days granted within which to file the record of appeal excluded Saturdays, Sundays and public holidays. We are satisfied that in terms of Order 2 rule 1 (C) Saturdays and public holidays are excluded only when the limited time is less than six days. That rule on computation of time states:-

"When the limited time is less than six days, the following days shall not be reckoned as part of the time, namely Saturdays and Sundays and any public holidays."

To the same effect is Order 3 Rule (2 (5) of Rules of Supreme Court, white Book, 1999 Edition, except that the limited time is one of seven days in the White Book. The point of counting days as raised by the applicant before the single Judge was valid and meritorious. But the court has a discretion in enlarging time. In the instant case, we are satisfied that there was no inordinate delay. We take note that as we were hearing this application, the actual appeal had been set for 21st march, 2002, when originally it was to be on 21st February, 2002.

On the whole, we cannot fault the single Judge for extending the time on the facts of this case despite the fact that the applicant had raised a valid point.The application is refused and we make no order as to costs.

Application refused.