

UNIVERSITY OF ZAMBIA COUNCIL v CALDER (1998) S.J. 21 (S.C.)

SUPREME COURT
BWEUPE, D.C.J., SAKALA AND CHAILA, JJ.S.
12TH AUGUST, 1997.
(S.C.Z. JUDGMENT NO. 5 OF 1998)

Flynote

Appeal - Extension of time - Appeal to a full court from a single judge - When such appeal should be made

Headnote

The Appellant had been granted two extensions of time within which to file a Record of Appeal. His third such application was denied by a single judge. The appellant then applied for leave to appeal to a full court against the single judge's decision to refuse to grant another extension of time. The judge held that there was no provision to appeal to a full court against the decision of a single judge. The appellant appealed to the Supreme Court.

Held:

- (i) When the order, direction, or decision made by a single judge has taken effect, nothing remains on the record that can be varied, discharged or reversed by the full court.

For the applicant: Mr P. Kapongo of Kwazi Chambers.
For the respondent: No appearance.

Judgment

SAKALA, J.S.: delivered the ruling of the court.

In terms of Rule 71 (1) (b) of the Supreme Court Rules Cap.25, we heard this application in the absence of the respondent as we did not see it fit to adjourn the hearing. This is an application by way of Notice of Motion against a decision of a single judge of this court dated 30th of May, 1997, refusing the appellant's application for another extension of time within which to file the record of appeal.

The brief history of the application before us is that on 27th of November 1996, the appellant was granted 30 days extension of time within which to file the record of appeal. According to the record this was not the first extension. Four months after the extension of 30 days was granted the appellant again applied for another extension of time within which to file the record of appeal. The application was heard on the 11th of April 1997. During the hearing of the application, Counsel for the appellant informed the single judge that an extension for a week "could be sufficient". The Court then made the following order:

"In the interest of justice the appellant is granted 14 days within which to lodge the record of appeal failure which the appeal shall stand dismissed with costs. Today's costs to the respondent in any event."

On the 30th of May 1997, 49 days after the extension of 14 days, the appellant appeared before a single judge. According to the record the proceedings of that day went as follows:

"In Chambers
Coram: W M Muzyamba
Matter Between:

THE UNIVERSITY OF ZAMBIA COUNCIL AND
JEAN MARGARET CALDER

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For the Applicant: PAUL KAPONGO: Nkwazi Chambers.
For the Respondent: L.C. ZULU: RMA Chongwe & Company.

MR KAPONGO

This is our application for leave to appeal to the full bench against the decision of the court refusing a further extension of the time to lodge the Record of Appeal. I want to rely on the affidavit of Micheal Tandeo filed on 12/5/94.

MR ZULU

We object to the application firstly on the ground that the appellant have had three occasions on which they had been allowed an extension of time within which to lodge the Record of Appeal. The last occasion was on 11th April, 1997, before this Court. the appellant agreed to 7 days but were given 14 days within which to file the record of appeal, but failed to do so. It is therefore not true that they were refused an extension. The application is here misconceived and should be dismissed.

MR KAPONGO in reply. - Nil

Court:

This is an application for leave to appeal to the full court against the decision of this court refusing an application for further extension of the time within which to lodge the Record of Appeal. No appeal lies to the full court against a decision of a single judge. The proper course in the circumstances is to apply to the full court in terms of section 4 of the Act and Rule 48(4) of the Supreme Court Rules Cap 25. This application is therefore misconceived and is therefore refused with costs to the respondent."

It must be observed at this juncture that by 30th May, 1997, when the parties appeared before a single judge, the appeal was no longer in existence as it stood dismissed at the expiry of 14 days extension granted by a single judge on 11th April, 1997.

On 30th May,1997, a single judge was therefore perfectly entitled to hold the application misconceived and refusing it and in terms of Rule 12(4) the Master of Supreme Court should have not entertained the papers. The question for consideration by the full court is whether Section 4 and Rule 48 (4) of the Supreme Court Act are applicable to the facts of this application at this very late stage?

On behalf of the applicant Mr Kapongo submitted that in terms of section 4 of the Supreme Court Act and Rule 48(4) of the Supreme Court Rules, this court had power and jurisdiction to revive the appeal.

We have considered the submissions by Mr Kapongo and we have also examined the provisions of Section 4 of the Supreme Court Act. Section 4(1)(b) which in so far as is relevant to the present application reads:

"4(1) A single judge of the Court may exercise any power vested in the court not involving

the decision of an appeal or a final decision in the exercise of its original jurisdiction but;

- 4(b) in civil matters any order, direction or decision made or given in pursuance of the powers conferred by this section may be varied, discharged or reversed by the court."

Also Rule 48(4) reads as follows:

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- "(4) Any person aggrieved by any decision of a single judge who desires to have such decision varied, discharged or reversed by the court under para (b) of section four of the Act, shall in like manner file before the hearing by the court three extra copies of the proceedings including copies of any affidavits filed by any other party prior to the single judge's decision, for the use of the court."

Our understanding of both Section 4(1)(b) and Rule 48(4) is that for any litigant to take advantage of these provisions he must in the first place apply to the full court within, but before the expiry of the period extended by a single judge, when the appeal is pending by virtue of the extension. When the order, direction, or decision made by a single judge has taken effect, nothing remains on the record that can be varied, discharged or reversed by the full court. A party aggrieved by any decision of a single judge and desires to have such decision varied, discharged or reversed by the court should do so before the expiration of the time set by a single judge.

In the present application the applicant has come to the full court rather too late after the expiration of the 14 days extension. The application at this stage is therefore misconceived and is accordingly refused.

Appeal dismissed
