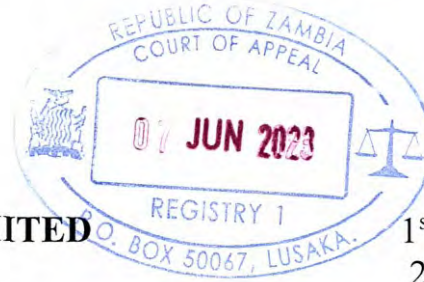


IN THE COURT OF APPEAL OF ZAMBIA  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)

CAZ/08/146/2023

BETWEEN:

**INFINITY GROUP ZAMBIA LIMITED**  
**AL ADWIA PHARMA LCC**



1<sup>st</sup> Appellant  
2<sup>nd</sup> Appellant

AND

**SANMUKH RAMANLALA PATEL**

Respondent

**Coram: Hon. Lady Justice N.A Sharpe-Phiri in Chambers**  
**on 7 June 2023**

For the Appellants: Mr. K. M. Sikazwe of Messrs Jaques & Partners  
For the Respondent: Mr. C. Nkhata of Messrs Paul Norah Advocates and Mr.  
C. Malambo of Malambo & Co.

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## R U L I N G

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Cases referred to:

1. *Nahar Investment Limited v Grindlays Bank International (Zambia) Limited*  
(1984) ZR 81

Legislation referred to:

1. *Court of Appeal Rules, Statutory Instrument No. 65 of 2016*

The Respondent brought this application on 30 May 2023 to dismiss the Appellants' appeal for want of prosecution pursuant to **Order 10 Rule 7 of the Court of Appeal Rules**<sup>1</sup>. The application was made by summons supported by an affidavit sworn by one Clarence Nkhata on the 30 May 2023.

In the affidavit in support, the Respondent asserts that the Appellants filed their Notice of Appeal and Memorandum of Appeal on 21 March 2023. That the Appellants were required to file a Record of Appeal within sixty (60) days from the date of filing the Notice of Appeal. That they conducted a search on 30 May 2023 which revealed that the Appellants had not filed their Record of Appeal within the prescribed period of 60 days from the date of filing the Notice of Appeal.

The Respondent further contended that more than 70 days have elapsed from the date when the Appellants filed the Notice and Memorandum of Appeal and the Appellants have not filed the Record of Appeal and Heads of argument to date. Further, that the Appellants have not filed an application for leave to file the Record of Appeal out of time. The Respondent averred that it is apparent that the Appellants are not desirous of prosecuting their appeal. They urged this Court to dismiss the appeal for want of prosecution.

There was no opposing affidavit filed into Court.

The matter was scheduled for hearing on 6 June 2023. On the said date, both counsel for the Appellants and Respondent were in attendance. Mr. K.M Sikazwe sought an adjournment of the matter to enable him file an affidavit in opposition as he had not done so. He contended that he only had instructions from the 1<sup>st</sup> Appellant. Mr. Nkhata opposed the application for an adjournment arguing that Mr. Sikazwe has had sufficient time to file an affidavit in opposition on behalf of the 1<sup>st</sup> Appellant but has not done so. This, counsel argued reflect the laissez-faire attitude the Appellants have taken in prosecuting the matter before the Court.

In reply, Mr. Sikazwe intimated that although he had had instructions from the 1<sup>st</sup> Appellant, he thought it best to wait for the 2<sup>nd</sup> Appellants.

Having heard the application and not being satisfied that the Appellants had given any satisfactory reason for not filing a response to the application within the time allowable, particularly having conceded that the 1<sup>st</sup> Appellant have given them instructions, I declined to allow the application for an adjournment and allowed the Respondent's counsel to proceed with their application. The Respondent relied on the affidavit of 30 May 2023 and **Order 10 Rule 7 of the Court of Appeal Rules Act No. 7 of 2016** and repeated in substance the evidence in the affidavit in support.

I have carefully considered the affidavit evidence and the submissions by counsel. The provisions on civil appeals under **Order X Rule 6 (a) of the Court of Appeal Rules** specifically provides a period of sixty days as the time within which a record of appeal should be lodged in the registry after the filing of a notice of appeal. An Appellant desirous of appealing to the Court of Appeal is obliged to lodge the Record of Appeal in the Registry within sixty days after filing their Notice of Appeal.

In the present case, the High Court Judge K.E. Mwenda-Zimba delivered a judgment in favour of the Respondent on the 22 February 2023. The Appellants filed a Notice of Appeal and Memorandum of Appeal on 21 March 2023. According to the Respondent's counsel, a search conducted on 30 May 2023 revealed that the Appellants have not lodged the record of appeal as required under **Order XIII, Rule 3(2) and (3) of the Court of Appeal Rules**. This fact was not disputed by the Appellants. It is evident that the requisite documentation for the appeal are not before Court in accordance with the Rules.

The Appellants have also not filed an application for enlargement or extension of time within which to file the Record of Appeal, nor have they filed an application to lodge the Record out of time.

It is evident that the Appellants have not taken any steps to pursue their appeal since filing the Notice of Appeal and Memorandum of appeal on 21 March 2023. The delay by the Appellants in prosecuting the appeal has prompted the Respondent to bring this application to dismiss for want of prosecution pursuant to **Order 10 Rule 7 of the Court of Appeal Rules**, which provides that:

*‘If an Appeal is not lodged with the time frame stipulated under rule 6, the respondents may make an application to the Court for an Order dismissing the appeal for want of prosecution, or alternatively for such order with regard to the appeal as the Respondent may require.’*

**Order X Rule 6(a) and Rule 7 of the Court of Appeal Rules** are unambiguous. They set out the implication of not lodging a Record of Appeal within the stipulated time. If an appeal is not lodged within a 60 day period of filing a notice of appeal, a party may apply to dismiss the appeal.

In the case of **Nahar Investment Limited v Grindlays Bank International (Zambia) Limited**<sup>1</sup> the Supreme Court propounded as follows:

*‘1. Appellants who sit back until there is an application to dismiss their appeal before making their own application for extension of time do so at their own peril.*

*2. In the event of inordinate delay or unfair prejudice to a respondent, the appellant can expect the appeal to be dismissed.’*

The Appellants have not taken any steps to lodge the record of appeal and a period of over 70 days lapsed since they filed the Notice of Appeal into Court. Further, they have made no attempt whatsoever to file an application for leave to file Record of Appeal and heads of argument out of time. They have also not defended this application despite having sufficient time to place something before the Court.

The Supreme Court has asserted, Appellants who sit back without taking steps to prosecute their appeal, do so at their own risk. As the Appellants have not taken any steps in this matter since March 2023, it is evident that they have no serious desire to have the appeal heard. The Respondent cannot continue being denied the enjoyment of the fruits of his judgment. I allow the Respondents' application and accordingly dismiss the appeal for want of prosecution with costs to the Respondent, to be agreed by the parties and in default of agreement, to be taxed.

Dated at Lusaka this 7 June 2023.

  
N.A. Sharpe-Phiri  
COURT OF APPEAL JUDGE