

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

CAZ/08/400/2021

BETWEEN:

MOHAMMED JABI

APPELLANT

AND

**YAKUB FALIR MULLA
FAZILA MULLA ALLOO
MWILA MUMBA JABI**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT**

**Coram: Hon. Lady Justice N.A Sharpe-Phiri in Chambers
on 30th November 2021**

For the Appellant: No appearance
For the Respondents: No appearance

R U L I N G

Legislation referred to:

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

This is a ruling on an application brought by the Appellant for an order for extension of time within which to file the Record of Appeal and Heads of argument. It was brought by Ex-parte Summons pursuant to **Order XIII Rule 3 of the Court of Appeal Rules.**

The Summons is supported by an affidavit sworn by the Appellant Mohammed Jabi and filed on 22nd November 2021 in which he deposed that on 13th September 2021, the High Court dismissed the Appellant's action under cause number 2021/HP/152. That he filed a Notice of Appeal and Memorandum of Appeal in the Court of Appeal, exhibited as "MJ 1". He deposed that his advocates informed him that they faced challenges in obtaining a full record of proceedings from the High Court and to have the same typed, that the proceedings were uplifted from the Court on 11th November 2021 but that the same are not complete as the proceedings relevant to his appeal were not included and typed. He exhibited a copy of the letter by his advocates to the Assistant Registrar marked "MJ 2". That the Assistant Registrar had advised that the said omitted proceedings would not be ready by the 22nd November 2021, being the last day for filing of the Record of Appeal. A copy of the letter from the Assistant Registrar confirming the incomplete record of proceedings was exhibited and marked "MJ 3". The Appellant stated further that despite the incomplete record of proceedings from the High Court, he was advised by his advocates that they go ahead and photocopy the draft Record of Appeal whilst awaiting the final proceedings from the High Court, he exhibited a copy of the receipt obtained from a business centre as "MJ 4". He added that he would need a further 14 days to finalize the Record of Appeal to include the missing proceedings in the Record of Appeal and have the same filed.

The matter was scheduled for hearing of the application for extension of time within which to file the Record of Appeal. The parties have indicated that the Court could render its decision without hearing them in view of there being no opposition by the respondents.

I have carefully considered the affidavits on record, the submissions of the parties and the relevant rules of this court.

The provisions on civil appeals, **Order X Rule 6 (a) of the Court of Appeal Rules** specifies a period of sixty days as the period within which a Record of Appeal should be lodged in the Registry after the filing of a notice of appeal. Therefore, subject to an extension of time, an Appellant desirous of appealing to the Court of Appeal is obliged to lodge the appeal by filing enough copies of the Record of Appeal in the Registry within sixty days after filing the Notice of Appeal.

If the absence of this, **Order XIII Rule 3 (1) of the Court of Appeal Rules** provides as follows:

'3(1)The Court may, for sufficient reason extend the time for-

(a) making an application, including an application for leave to appeal;

(b) bringing an appeal; or

(c) taking any step in or in connection with an appeal.

(2) An application to the Court for extension of time in relation to a judgment or the date of expiration of the time within which the application ought to have been made, shall be filed in the Registry within twenty-one days of the judgment or such time within which the application ought to have been made, unless leave of the Court is obtained to file the application out of time.'

(3) The Court may for sufficient reason extend time for making an application, including an application for leave to appeal, or for bringing an appeal, or for taking any step in or in connection with any appeal, despite the time limited having expired, and whether the time limited for that purpose was so limited by the order of the Court, by these Rules, or by any written law.'

The import of the foregoing section is that this Court is empowered to exercise wide discretion regarding time within which an appeal can be filed. **Order XIII Rule 3 (1) of the Court of Appeal Rules** does not provide for precise circumstances when such discretion may be exercised outside the time for filing an appeal, save to state that such power may be exercised for sufficient reason. The question that then begs an answer is whether this court should grant an order in favour of the Appellant to extend the time within which to file the Record of Appeal and Heads of Argument.

The evidence presented before me shows that Counsel for the Appellant could not proceed to file the Record of Appeal and Heads of Arguments within 60 days provided by the rules as he was unable to retrieve vital typed proceedings which were omitted from the record in the lower Court in good time. A letter was also exhibited dated 12th November 2021 where Counsel wrote a letter to the Assistant Registrar of the High Court requesting to extract copies of the proceedings. The Assistant Registrar advised in a letter dated 22nd November 2021 that the said omitted proceedings would not be ready by the 22nd November 2021, being the last day for filing the Record of Appeal unless after 2 more weeks from that date.

It is clear that the Applicant complied with the Rules in filing the Notice and Memorandum of Appeal within time. However, there have not been able to file a complete Record of Appeal containing all proceedings in the lower court due to the administrative issues experienced by the staff in the typing pool of the High Court's Registry. By the Assistant Registrar's letter to the Applicant's Advocates dated 22nd November 2021, the Assistant Registrar intimated to the Advocates that the omitted proceedings would only be ready after 2 weeks from that date. Clearly the delay in filing the Record of Appeal would result. However this would not be on account of the Appellant's Advocates inefficiency but on account of administrative lapses in the lower Court's registry. I am of the view that this is a proper case within which to exercise the discretion envisaged under **Order XIII Rule 3 (1) of the Court of Appeal Rules.**

For the foregoing reason, I am satisfied that the Appellant has provided sufficient reasons to enable me to invoke my discretion to extend the time within which the Appellant can file the Record of appeal and heads of argument. I accordingly grant the order for extension of time as prayed. I further direct the Appellant to file the said Record of Appeal within fourteen (14) days from the date hereof.

I make no order for costs.

Dated at Lusaka this 30th November 2021.


N.A. Sharpe-Phiri
COURT OF APPEAL JUDGE