**IN THE SUPREME COURT OF ZAMBIA SCZ /8/246/2011**

**HOLDEN AT LUSAKA**

(Civil Jurisdiction)

**BETWEEN:**

**COLLINS KINGHORN AND 22 OTHERS APPELLANTS**

**AND**

**TRUSTEES FOR WOMEN FOR CHANGE 1ST RESPONDENT**

**STAR FURNITURE MANUFACTURING**

**COMPANY LIMITED 2ND RESPONDENT**

**TRUSTEES FOR AFRICAN NATIONAL**

**CONGRESS OF SOUTH AFRICA 3RD RESPONDENT**

***Before Hon. Mrs. Justice E.N.C Muyovwe on the 11th September, 2012.***

For the Appellants: Dr. J. Mulwila S.C., Messrs Ituna Partners

For the Respondents: Mr. S. Sikota S.C., Messrs Central

Chambers and Mr. M. Sikaulu of Messrs

Sikaulu Lungu Mupeso Legal Practitioners

**R U L I N G**

This is an application for extension of time within which to file the record of appeal pursuant to **Rule 12 of the Supreme Court Rules Cap 25** **of the Laws of Zambia**. According to the date stamp on the Summons and Affidavit in support, the application was filed by the Appellants on 10th January, 2012. For some strange reason, this application was not brought to the attention of the court much earlier.

The record shows that the Respondents filed a Summons to dismiss appeal for want of prosecution on the 14th March, 2012.

The two applications were set for hearing on the 28th March, 2012. On that date, both parties applied for an adjournment in order to file affidavits in opposition. When the matter came up for hearing on 28th May, 2012, the parties informed me that they were exploring an ex-curia settlement. However, this failed.

In the affidavit in support, Dr. Mulwila stated that he delayed to lodge the appeal because he had gone to London for eye surgery and only went back to his office on 19th January, 2012 after the vacation.

On behalf of the Respondent, Mr. Sikota filed an affidavit in which he deposed that no payment had been made by the Appellant for the Summons for extension of time to file record of appeal. That, therefore, the application for extension of time to file the record of appeal was not properly before Court as there is no receipt for payment.

Learned Counsel for the parties were availed the Court Receipt Book to enable them search for the receipt for the Summons and Affidavit but to no avail. Instead what was found was a receipt for K30,000 dated 10th January, 2012 for a Notice paid for by Ituna Partners. A copy of this receipt is on record.

The issue of whether the Summons and Affidavit filed on 10th January, 2012 by Ituna Partners was properly before Court had to be dealt with obviously before the application could be heard.

In this regard, Mr. Sikaulu on behalf of the Respondents submitted, inter alia, that there being no receipt on record for the payment of the Summons and Affidavit filed on 10th January, 2012 their position was that the documents were not paid for and, therefore, the application is not properly before Court.

On the other hand, State Counsel Dr. Mulwila submitted that the Summons and Affidavit filed on 10th January, 2012 was probably paid for on the same day going by the receipt on record which shows that on the same day Ituna Partners paid for a Notice. That his firm did not file any Notice and Affidavit on 10th January, 2012. According to Dr. Mulwila, this could be the cause of the confusion because the Registry Staff indicated that it was a Notice instead of a Summons.

Further, that the argument by his learned friends that the Summons is not properly before Court should not be entertained as the irregularity is curable. He relied on **Order 2 of the White Book**. He submitted that he was leaving the matter to this Court.

In reply, Mr. Sikaulu submitted that the receipt which is written ΄notice΄ is for the application date stamped 11th January, 2012. He argued that **Order 2 of the White Book** is not applicable to this matter whose payment has not been made and that the matter is in fact void not irregular.

State Counsel Mr. Sikota added that had there been payment for two Notices there should have been two receipts on record and perhaps someone would have had to explain how a Notice was charged the same as a Summons.

I have considered the submissions by learned Counsel for the parties.

Indeed, all parties are agreed that there is no receipt for the Summons and Affidavit filed on 10th January, 2012 by Ituna Partners. However, there is on record a receipt dated 10th January, 2012 which shows a payment for a Notice by Ituna Partners. The record shows that no such Notice was filed by Ituna Partners on 10th January, 2012. Dr. Mulwila has urged me to resolve this issue in favour of the Appellant especially that no Notice was filed by his firm on 10th January, 2012.

Clearly, there appears to be some confusion in this matter and I reluctantly admit that our Registry Staff played a role in this. Because of the existence of the receipt dated 10th January, 2012 showing that Ituna partners paid for a ΄Notice΄ I will give the benefit of doubt to the Appellants as it is possible that our Registry Staff made a mistake in issuing the receipt.

Therefore, for reasons stated herein the application for extension of time to file the record of appeal is properly before Court.

**Delivered in Chambers on this 11th day of September, 2012.**

**E.N.C. MUYOVWE**

**SUPREME COURT JUDGE**