

IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA

2009/HP/1104

(Civil Jurisdiction)

BETWEEN:

ADAM BANDA

AND

GERRY MSONI



PLAINTIFF

DEFENDANT

Before the Hon. Mrs. Justice A. M. Sitali on the 4th day of February, 2016.

For the Plaintiff : Mr S. C. Mwananshiku of M & M Advocates

For the Defendant : In Person

R U L I N G

Legislation referred to:

The High Court Rules, Chapter 27 of the Laws of Zambia, Order 47 rule 25.

This is the defendant's application for leave to appeal out of time. It is made pursuant to Order 47 rule 25 of the High Court Rules and is supported by an affidavit deposed to by Gerry Msoni the defendant. This follows the judgement of this court dated 29th October 2014 entered in favour of the plaintiff against the defendant. In her affidavit, the defendant asserted that although judgement against her was entered on 29th October 2014, she only became aware of it sometime in July 2015 when the plaintiff went to her house in the company of valuation surveyors to inspect the house under the guise of the court's judgment.

The defendant stated that upon perusal of the judgment she attempted to instruct counsel from the National Legal Aid Clinic for Women to lodge her appeal but they advised her that they needed time to study the judgment and the record of proceedings. She went on to state that she believes that her appeal has merit as per intended notice of appeal and memorandum of appeal marked GM1. She further stated that her failure to file the appeal within the stipulated time was neither disrespectful nor intended to demean the court. She therefore urged me to grant her leave to appeal out of time in the interest of justice.

At the hearing, the defendant relied entirely on the affidavit in support of the application filed in court on 23rd December 2015 and did not make any oral submissions.

In opposing the application counsel for the plaintiff relied on the plaintiff's affidavit in opposition and submitted that there has been inordinate delay by the defendant in making the application to appeal out of time as the judgment which she seeks to appeal against was delivered on 29th October 2014 and the defendant's application was only filed on 23rd December 2015. Counsel contended that there has been no attempt to explain why the defendant and her counsel did not attend at trial despite the record showing that they were notified of the trial date.

Counsel submitted that although the defendant and her advocates were not present, this court did take time to consider the defence and the bundle of documents submitted by the defendant. He further submitted that in the circumstances of the case and based on the evidence before the court, he did not see how the Supreme Court would overturn the judgment based on the issues raised by the defendant at this stage, which issues were not before the court at the time of the trial.

In reply, the defendant asserted that her seeming delay to appeal was not intentional as she had been represented initially by Mr. Nicholas Chanda and

that after he feel ill, she retained Bokani Soko of Ferd Jere and Company with instructions to make necessary submissions to the Court at trial but he did not do so. She asserted that this was the reason why some of the facts stated in the affidavits were not before the Court.

She also contended that the plaintiff had not complied with the order of the court for the parties to agree on a valuation surveyor to value the property. She submitted that instead, he took a surveyor of his choice to the property to value it. She contended that he also proceeded to have the Lusaka City Council change the title deeds of the property in issue into his name with a view of selling the house and compensating her for the improvements she effected to the house. She submitted that this was contrary to the Court's order that the parties should agree on a valuation surveyor to value the property failure to which the Director of the Government Valuation Department should was to assign a qualified surveyor to carry out the valuation. She added that the plaintiff had lied in his affidavit regarding his residential address because the residential address he stated is the house in contention, which is the address at which she lives. She therefore urged that her application for leave to appeal out of time be granted or else she would suffer irreparable damages.

I have considered that defendant's application and the reasons she advanced for the delay in seeking leave to appeal out of time. It is my considered view that the reasons advanced are plausible and that it is probable that the defendant was not aware that the judgment against her had been granted until she was made aware of it sometime in mid July 2015 when the plaintiff took a valuation surveyor to the property to carry out a valuation survey with a view to selling the property. I will therefore exercise my discretion to grant an extension of time within which to appeal. I order that the defendant shall file a notice of appeal to the Supreme Court within 30 days of today's date. I further order that the judgment of this Court dated 29th October, 2014 be stayed pending determination of the appeal.

Each party will bear his or her costs of this application. Leave to appeal is hereby granted.

Dated the 4th day of February 2016.



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A. M. SITALI
JUDGE