

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Criminal Jurisdiction)**

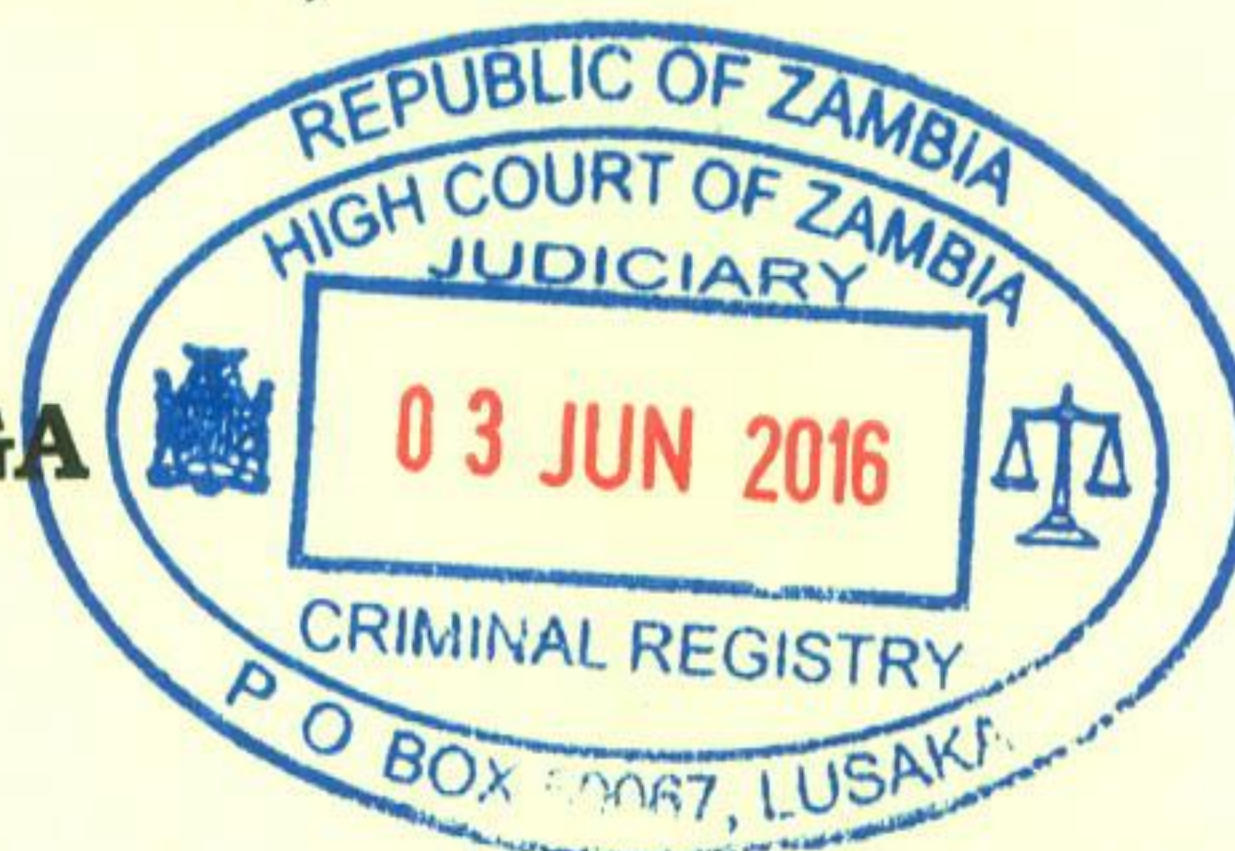
HPA/34/2015

BETWEEN:

SIMON MTONGA

VERSUS

THE PEOPLE



APPELLANT

RESPONDENT

**Before the Hon. Mrs. Justice J.Z. Mulongoti
on the 3rd day of June, 2016**

For the Appellant:

Mr. W. Mushanga, AKM Legal Practitioners

For the Respondents:

N/A

R U L I N G

This is an application for renewal of leave to appeal to the Supreme Court pursuant to section 14 of the Supreme Court Act. The application is by ex parte summons and an affidavit sworn by the appellant. He deposed that he could not process his appeal on time after leave was granted because he ran into some difficulties.

That he was now unemployed and it was difficult for him to meet the conditions made by his advocates which have since been settled. He also had other social problems including the death of his uncle in Kabwe which necessitated him to travel to Lundazi to pick up his sick mother.

This led to him running out of time to lodge the appeal on time.

At the hearing, Mr. Mushanga, the appellant's counsel relied on the affidavit in support. He also urged the court to grant the application in accordance with its inherent jurisdiction and Article 118 of the amended Constitution Act No. 1 of 2016.

I perused section 14 of the Supreme Court Act, I am of the considered view that the appellant wrongly made this application pursuant to that section. Section 14 is couched thus:

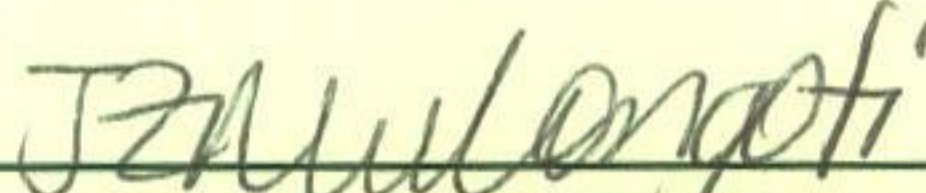
“14(1) A party to an appeal to the High Court may appeal to the Court against the High Court Judgment with leave of that Court if given at the time when judgment is pronounced, or with the leave of the Court.”

At the time I pronounced judgment, I did not grant the appellant leave to appeal. The appellant applied for leave to appeal which I granted on 19th February, 2016. The appellant failed to process his appeal after leave was granted and has made this application for renewal of leave to appeal on 12th April, 2016. As afore stated, this application for renewal was wrongly made under section 14 of the Supreme Court Act. Section 14 is appropriate when leave has not been granted and an application for leave to appeal is made, as the appellant did initially.

Further, I am of the considered view that the appellant should have applied for leave to appeal out of time.

Having read Article 118 (2) (e) of the amended Constitution which provides that justice shall be administered without undue regard to procedural technicalities and coupled with the court's inherent jurisdiction, the appellant is hereby granted leave to appeal out of time.

Delivered at Lusaka this 3rd day of June, 2016.



J.Z. MULONGOTI
HIGH COURT JUDGE