



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**ELC Case 1403 of 2007**

**TULIP PROPERTIES LIMITED.....PLAINTIFF**

**VERSUS**

**MOHAMED KORIOU NUR**

**SIMON KIPRONO LABOSO**

**MACDONALD LIJOODI MARAKA**

**NOOR MOHAMED HASSAN.....1<sup>ST</sup> DEFENDANT**

**DAVID MWENJE.....2<sup>ND</sup> DEFENDANT**

**THE COMMISSIONER OF LANDS.....3<sup>RD</sup> DEFENDANT**

**THE REGISTRAR OF TITLES.....4<sup>TH</sup> DEFENDANT**

**R U L I N G**

Before me is a Notice of Motion brought by the 1<sup>st</sup> Defendant seeking leave to appeal against the ruling of this court which was delivered on 3<sup>rd</sup> October 2008. The application is based on the grounds as stated on the body of the Notice of Motion and supported by an affidavit sworn by Karen Mate learned Counsel for the Applicant. What is sought is a judicial discretion. For proper administration of justice such an application for leave to appeal against an interlocutory order ought to be made immediately after the delivery of the ruling or at most soon thereafter.

The ruling was delivered on 3<sup>rd</sup> October 2008 and the Applicant did not show any indication that he intended to apply for leave to appeal against the said ruling. She participated in selecting the next date for further hearing of the suit which was agreed by all counsel to be suitable for their diaries and they all agreed by consent that PW1 be available for further examination in chief on 22<sup>nd</sup> October 2008.

This application was brought on 16<sup>th</sup> October 2008 under certificate of urgency which is about 2 weeks later. This is obviously inordinate delay. Counsel for the Applicant submitted that after the ruling was delivered she had not received instructions to appeal against the ruling and by the time the instructions were received time to appeal was running out and delay was caused due to preparation of the Notice of Appeal which has already been filed. With due respect to counsel an appeal or notice of appeal filed before leave was granted is incompetent.

It is conceded by counsel and rightly so that there is no automatic right to appeal. It is now settled that the decision whether or not to grant leave to appeal is essentially discretionary.

The Applicant has clearly not placed sufficient material before me to enable me exercise my unfettered discretion in their favour. In the result I dismiss the application with no order as to costs.

Dated and delivered at Nairobi this 22<sup>nd</sup> day of October 2008.

**J. L. A. OSIEMO**

**JUDGE**