



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OMOLO, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. NAI. 15 OF 2012 (UR. 11/2012)

BETWEEN

SANDHURST LIMITED 1ST APPLICANT
LANCASTER LIMITED 2ND APPLICANT
LANGATA ROAD ARCADE LIMITED 3RD APPLICANT
REST VILLA LIMITED 4TH APPLICANT

AND

KENYA COMMERCIAL BANK LIMITED 1ST RESPONDENT
EAST AND SOUTHERN DEVELOPMENT BANK 2ND RESPONDENT
TRITON PETROLEUM COMPANY LIMITED
(IN RECEIVERSHIP) 3RD RESPONDENT
NELLEA LIMITED 4TH RESPONDENT

(Application for extension of time within which to file and serve a Notice of Appeal and to file and serve a Record of appeal from the ruling/order of the High Court Kenya at Nairobi (Milimani Commercial Courts (Muga Apondi, J.) dated 30th September, 2011

in

H.C.C.C. NO. 227 OF 2010)

RULING

The question that I have to determine at this stage is not whether the notice of motion dated the 26th January, 2012 and lodged in the Court on the 30th January, 2012 has merit and will succeed; that question will be determined by the single Judge who will hear the motion on merits. What I have to determine at this stage is whether the said motion is urgent and ought to be set down for hearing on priority basis i.e. whether it ought to be allowed to jump the queue over other similar motions. The decision sought to be appealed against was made on the 30th September, 2011. The motion itself was filed on 30th January, 2012. This was some four months during which the applicants and their legal advisers apparently did nothing over the matter. Mr. Miller, learned counsel for the applicants, told me that one of the directors of the applicant companies has been out of Kenya for a long time and is or has been fighting extradition proceedings in London seeking to return him to Kenya and hence their failure to give instructions to Mr. Miller, even to file a notice of appeal. As has been repeatedly stated, a notice of appeal

is an inexpensive document which can be filed and which, in most cases, is filed as a matter of course. A notice of appeal can be withdrawn or can lapse on its own without causing heavy expenses to either the party filing it or the party against whom it is served. Having carefully listened to both Mr. Miller and Mr. Gichuhi, learned counsel for the 1st to 3rd respondents, I see no valid reason to make me change the position I took earlier in the matter when I declined to certify it urgent. I still decline to do so and direct that the motion herein be listed for hearing in the normal way. The costs occasioned by the proceedings regarding the question of urgency shall be in the motion. Those are my orders.

Dated and delivered at NAIROBI this 2nd day of MARCH, 2012.

R.S.C. OMOLO

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR