



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CIVIL APPLICATION NO. 313 OF 2008**

**BETWEEN**

**GEORGE LALLA ODUOR ..... APPLICANT**

**AND**

**CANNON ASSURANCE (K) LTD. .... RESPONDENT**

**(Application for extension of time to file notice of appeal and record of appeal out of time in an intended appeal from the ruling and order of the High Court of Kenya at Nairobi (Okwengu, J.) dated 19<sup>th</sup> March, 2008**

**in**

**H.C.C.C. NO. 174 OF 2007)**

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**R U L I N G**

This is an application under **Rule 4** of the *Court of Appeal Rules* for an order that time for filing and serving the notice of appeal and also time for filing and serving the record of appeal be extended.

The applicant intends to appeal against the ruling of the superior court (Okwengu, J.) dated 19<sup>th</sup> March, 2008 whereby the superior court dismissed an interlocutory application for injunction filed by application against the respondent. By the application, the applicant sought an order of injunction to restrain the respondent from advertising for sale or selling the applicant's property L.R. No. Nairobi/Block 76/873 until the determination of the suit.

The ruling shows that the application had charged the said property to secure a loan of Shs.1,500,000/= advanced to him by the respondent sometime in April, 1999. The loan had accelerated to Shs.4,088,259/= as a result of interest and penalties by the time application was heard by the superior court.

The application is supported by the affidavit of the applicant in which he explains the reasons for the delay in filing the notice of appeal and the record of appeal. He explains, inter alia, that the ruling was scheduled to be delivered on 30<sup>th</sup> August, 2007, that the ruling was not ready on that day and was

postponed to be read on notice, that later his advocate made inquiries about the ruling; that it was not until 24<sup>th</sup> July, 2008 that his advocate received a letter from the court dated 17<sup>th</sup> July, 2008 to the effect that the ruling was read on 19<sup>th</sup> March, 2008; that thereafter his advocate applied for copies of proceedings and ruling; that the copies of proceedings were received on 3<sup>rd</sup> November, 2008 that it was not until 14<sup>th</sup> November, 2008 that a certified copy of the ruling was received and that the certificate of delay was received on 3<sup>rd</sup> December, 2008. According to him, the delay in filing the notice of appeal and the record of appeal was occasioned by the fact that ruling date was not communicated to his advocates and by the delay in obtaining copies of proceedings and ruling.

The facts deponed to by the applicant are verified by the copies of correspondence exchanged between his advocates and the court. Further, the certificate of delay dated 3<sup>rd</sup> December, 2008 verified that time required to supply copies of the proceedings and ruling and order was from 1<sup>st</sup> August, 2008 to 18<sup>th</sup> November, 2008. The respondent's counsel did not file a replying affidavit or attend the hearing of the application. I am satisfied that the facts deponed to are true. The present application was filed on 5<sup>th</sup> December, 2008, two days after the applicant obtained a certificate of delay. I am satisfied that the applicant has given a reasonable explanation for delay and that the delay is not inordinate in the circumstances of this case.

The applicant has filed a draft memorandum of appeal containing the proposed grounds of the intended appeal. It was contended at the hearing of the application in the superior court that **Section 191** of the *Insurance Act* prohibits an Insurance Company from engaging in any other business and that the respondent had no capacity to enter into the business of advancing loan. One of the proposed grounds of appeal states that the learned judge erred in law in not appreciating that the respondent cannot deal with business of financing mortgages without valid licence under the *Banking Act*. This is a legal issue which is arguable.

For those reasons, I allow the application and give leave to the applicant to file and serve both the notice of appeal and the record of appeal. The notice of appeal to be filed and served within 14 days from the date hereof and the record of appeal to be filed and served within 30 days from the date of filing of the notice of appeal.

No orders as to costs.

**Dated and delivered at Nairobi this 16<sup>th</sup> day of July, 2010.**

**E. M. GITHINJI**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**