



REPUBLIC OF KENYA

**IN THE COURT OF APPEAL
AT NAIROBI**

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

CIVIL APPLICATION NO. NAI. 167 OF 2000 (74/2000 UR)

BETWEEN

**DRISCOLL INVESTMENTS
LIMITED.....APPLICANT**

AND

- 1. CANELAND LIMITED**
- 2. DOLPHIN HOLDINGS LIMITED**
- 3. THE DELPHIS BANK LIMITED**
- 4. C.M.C. HOLDINGS
LIMITED.....RESPONDENTS**

(An application for extension of time to serve notice of an intended appeal in the High Court of Kenya at Nairobi (Mr. Justice Mbaluto) dated 26th April, 2000

in

H.C.C.C. NO. 1135 OF 1998)

RULING

The applicant, Driscoll Investments Limited, seeks orders in this application brought under rules 4 and 76 of the Rules of this Court as follows:

"1.That time be extended to a date to be fixed to allow the applicant to serve a copy of the notice of appeal filed by it in the superior court in the High Court Civil Case No. 1135 of 1998 on 8th May, 2000 on CMC Holdings Limited, Connaught House, Lusaka Road, Nairobi.

2.Alternatively the time for lodgment of this application for dispensing with the service of Notice of Appeal on CMC Holdings Limited be extended to the date hereof and that such service on CMC Holdings Limited be dispensed with.

3. That costs of this application be provided for." Mr. Inamdar who appears with Mr. Rao for the applicant gives reasons for non-service of the notice of appeal on CMC Holdings Limited as follows:

1. The applicant was not a party to the suit in the High Court and it was not aware of the execution proceedings against Dolphin Holdings Limited, by way of sale of applicant's shares in Delphis Bank Limited.

2. The applicant had written to CMC Holdings Limited through its advocate Mr. Rao in regard to the sale of its shares and that the impression given by CMC Holdings Limited to Mr. Rao was to the effect that CMC would hold those shares against a substantial debt owed to CMC by Caneland Limited.

3. The applicant only knew of what had happened in the superior court on or about 3rd May, 2000.

Mr. Ngaira who appears for Caneland Limited does not object to the extension of time sought to serve the notice of appeal on CMC Holdings Limited, which company, though served with this application, is not here to oppose the application.

The second and third respondents do not oppose this application. Mr. Ngaira opposed the alternative prayer set out above by me. Mr. Inamdar says that he will be quite content in not pursuing the alternative prayer, and I think corrected that CMC Holdings Limited were not served with a copy of the notice of appeal for reasons which are cogent and understandable. Even experienced advocates could overlook service of a notice of appeal on a party who is not enjoined in the proceedings and rule 4 of the Rules of this Court caters for, inter alia, extension of such time to serve such notice of appeal on a party affected. I have the discretion in such circumstances to extend the time. In any event there will be no prejudice suffered by CMC Holdings Limited. It will have its day in the court, if it so wishes.

I grant to the applicant the extension of time to serve the notice of appeal lodged in the superior court on 8th May, 2000 by seven days from to-day, so that a copy of the said notice of appeal must be served on CMC Holdings Limited by 30th June, 2000. I also direct that the record of Civil Application No. Nai. 152 of 2000 be served on CMC Holdings Limited by 30th June, 2000 so that that application can be heard between all affected parties at the same time. As the alternative prayer is not pursued I make no orders thereon.

In all the circumstances of this application, I make no order as to costs.

Dated and delivered at Nairobi this 23rd day of June, 2000.

A.B. SHAH

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR.