



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO. NAI. 219 OF 1995 (102/95UR)

BETWEEN

EVANS AURA BOAZ .....APPLICANT

AND

THE CHAIRMAN, COURT BROKERS

LICENSING BOARD .....RESPONDENT

(Application for extension of time to file appeal out of time

from the Ruling and Order of the High Court of Kenya at

Mombasa (Justice Oguk) dated 22nd May, 1995 in

H.C.MIS.A. NO. 231 OF 1994)

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R U L I N G

The applicant filed an application under rule 4 of the Rules of this Court seeking extension of time within which to file a notice of appeal and a record of appeal out of time.

The applicant had filed an appeal from the ruling of the High Court (Aguk, J.) in which his notice of motion filed under Order LIII rule 2 of the Civil Procedure Rules (Revised) Rules 1985 asking discretionary order of certiorari to bring into Court and quash the proceedings and decision of the Court Brokers Licensing Board of 1st August 1994 under which his licence to practice as a Court Broker was revoked. He also sought an order for prohibition to restrain the Chairman of the Court Brokers Licensing Board from gazetting the revocation of his licence as contained in Gazette Notice dated 1st August,

1994. His record of Appeal in Civil Appeal No. 77 of 1995 lacked a certified copy of the Order appealed against which rendered the appeal incompetent and was struck out on 26th July, 1995.

The facts that led to the cancellation of his licence was that there were complaints lodged by the decree holders in Mombasa RMCC 717/90 and Mombasa SRMCC 585/90 against the applicant that he had failed to comply with rule 28(1) of the Court Broker's Rules. The applicant appeared before the Board for disciplinary proceedings in respect of the same. The Board having heard him and having considered his explanation, nevertheless, he was found guilty of failing to comply with rule 28(1) of the Court Brokers Rules. His licence which was to expire on 30th June, 1994 was revoked and his money paid for renewal of his future licence refunded. This is what precipitated notice of motion for the orders of certiorari and prohibition.

In his application, he argues that he was accorded the chance to defend himself which refusal infringed the rule of national justice. His wish is to pursue the appeal so that the licence could be restored to him. He maintained that his appeal has chances of success.

Counsel for the respondent opposed the application on grounds that the licence that had been issued to the applicant on 1st October, 1992 for two years had expired and application for renewal had been rejected due to his non-compliance with rule 28(1) of the Court Brokers Rules for which he was found guilty to which there was no provision for appeal. In the circumstances there could be no arguable appeal to which the applicant could succeed.

For me to be able to exercise my discretion, I must be convinced that the applicant has an arguable appeal with likelihood of success. As has been submitted to me, I do not accept that the applicant was not heard by the Court Brokers Licensing Board because there is evidence that he appeared before the Board and offered his explanation which explanation did not satisfy the Board. He was found guilty. This was a serious offence in which the applicant violated the trust bestowed on him for money received by him on execution of decree on behalf of a decree holder. Several demands had been made before the complaints were lodged with the Board as a last result. The fact that he failed to comply with rule 28(1) he cannot have an arguable appeal. For those reasons, I decline to exercise my discretion and order this application to be dismissed with costs.

Dated and delivered at Nairobi this 10th day of November, 1995.

J.M. GACHUHI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR



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