

NOVA SCOTIA COURT OF APPEAL

Citation: *Nyiti v. Cape Breton University* , 2009 NSCA 69

Date: 20090617

Docket: CA 307022

Registry: Halifax

Between:

Raphael Nyiti

Appellant

v.

The Board of Governors,
Cape Breton University

Respondent

Judges: Saunders, Oland and Fichaud, JJ.A.

Appeal Heard: June 17, 2009, in Halifax, Nova Scotia

Written Judgment: June 17, 2009

Held: Appeal dismissed per oral reasons for judgment of
Saunders, J.A.; Oland and Fichaud, JJ.A. concurring.

Counsel: Hugh R. McLeod, for the appellant
Nancy F. Bareaux and Krista Smith, for the respondent

Reasons for judgment: (Orally)

[1] We are unanimously of the view that the appeal ought to be dismissed.

[2] The trial judge made no error in law resulting in an injustice when he allowed the respondent's application for summary judgment pursuant to 1972 **Civil Procedure Rule** 13 based on his clear findings that Mr. Nyiti had failed to assert or offer any facts to support his claims of fraud and breach of trust, and that therefore such claims had no real chance of success at trial. It is unnecessary to comment on the time limitation for the commencement of an action for breach of trust.

[3] We would not disturb Justice Edwards' order dated January 22, 2009, which effectively leaves outstanding only the claim of breach of fiduciary duty.

[4] While leave to appeal this interlocutory order is granted, the appeal is dismissed with costs to the respondent in the amount of \$1,500.00 inclusive of disbursements.

Saunders, J.A.

Concurred in:

Oland, J.A.

Fichaud, J.A.