

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Ofume v. CIBC Mortgages Inc.*, 2003 NSCA 77

**Date:** 20030722

**Docket:** CA 202013

**Registry:** Halifax

**Between:**

Phillip Chukwuma Ofume and Maureen Ngozi Ofume

Applicants/Appellants

v.

CIBC Mortgages Inc.

Respondent

**Judge:** Cromwell, J.A. (in Chambers)

**Application Heard:** July 17, 2003, in Halifax, Nova Scotia

**Written Decision:** July 22, 2003

**Counsel:** Dr. Phillip Ofume, in person  
Jonathan T. Kenyon, for the respondent

Decision: (in Chambers)

[1] Dr. Ofume, appearing on behalf of his wife and himself, applies for filing dates for the hearing of this interlocutory appeal.

[2] The main action is one of foreclosure on a mortgage. The Ofumes brought an interlocutory application in the Supreme Court for an order compelling the mortgagee to accept monthly payments. Murphy, J. dismissed that application, but ordered that the Ofumes would be at liberty to make payments into court on a without prejudice basis. The Ofumes filed a notice by which they signified their intention to appeal that order. They applied for a stay of execution to Roscoe, J.A. and their application was dismissed. On the hearing of that application on, i.e. June 26, 2003, Dr. Ofume indicated to the Court that the appeal book would be filed that day and the factum on July 10, although in reviewing the file and the record of proceedings on that day, it appears to me that in fact Dr. Ofume was referring at that time to another file in which he was involved (C.A. 195552). To date, no appeal book or appellants' factum has been filed in this interlocutory appeal.

[3] It appears that counsel for the respondent did not receive notice of this application and no proof of service was filed. However, counsel appeared on behalf of the respondent and did not object to dates for the filing of the appeal book and the appellants' factum being set at this time.

[4] I, therefore, order that the appeal book and appellants' factum be filed on or before September 12, 2003. Given that this is an interlocutory appeal which is supposed to be prosecuted promptly by the appellants, I further order that if the appeal book and factum are not filed by that date, an order will issue dismissing the appeal. Once the appeal book and factum have been filed on behalf of the appellants, but not until then, the appellants shall apply forthwith for dates for the filing of the respondent's factum and a date for hearing the appeal. I direct that no date for the hearing of this appeal is to be set until an appeal book in proper form and an appellants' factum have been filed in compliance with my order.

Cromwell, J.A.

