

Date: 20020404  
Docket: CA 176939

**NOVA SCOTIA COURT OF APPEAL**  
**[Cite as: Ofume v. Vukelich, 2002 NSCA 48]**

**BETWEEN:**

MAUREEN OFUME and  
PHILLIP OFUME

Applicants/Appellants

- and -

GORANKA VUKELICH, and SUE STENHOLME and ST.  
JOSEPH'S COLLEGE OF EARLY CHILDHOOD EDUCATION  
(a body Corporate) and CHRIS RAFUSE

Respondents

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DECISION

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Counsel: Applicant/Appellant Maureen Ofume not appearing  
Applicant/Appellant Phillip Ofume in person  
Eugene Y.S. Tan for the respondents

Application Heard: April 4<sup>th</sup>, 2002

Judgment Delivered: April 4<sup>th</sup>, 2002

BEFORE THE HONOURABLE JUSTICE CROMWELL IN CHAMBERS

**CROMWELL, J.A.:** (in Chambers)

- [1] In a decision given January 11<sup>th</sup> and by order dated January 14<sup>th</sup>, 2002, Goodfellow, J. in chambers granted a declaration that the individual named defendants in this proceeding had not been personally served, that certain affidavits of service be struck out, that a stay of the action be granted until costs of \$500 were paid by Dr. Phillip C. Ofume and Maureen Ofume and directing that Dr. Ofume be prohibited from acting as agent or representative of Mrs. Ofume in any respect in this action.
- [2] On January 30<sup>th</sup>, 2002, a 23-page notice of appeal from that decision was filed with the Court. The appeal being an interlocutory appeal, it is governed by **Rule** 62.02(1)(a) and 62.05. The notice of appeal is to be filed within ten days from the date of the order appealed from and an application to set down the appeal is to be made to a judge in chambers on the first Thursday following the filing of the notice of appeal failing which the appeal shall be deemed dismissed unless a judge otherwise orders.
- [3] As noted, the notice of appeal was filed outside the ten day time period provided for in **Rule** 62.02 and there has been no application to a judge in chambers to set the appeal down for hearing. It follows that pursuant to **Rule** 62.05(3), the appeal is deemed to be dismissed unless a judge otherwise orders. No application has been filed to extend the time or to restore the appeal.
- [4] On March 22<sup>nd</sup>, Dr. Ofume, for himself and Mrs. Ofume, filed an interlocutory notice inter partes application to a judge in chambers in this Court which, in effect, seeks to have a judge in chambers in this Court set aside the order of Goodfellow, J. which is the subject of the intended appeal to this Court. This application has come on for hearing before me in chambers today.
- [5] The application fails and must be dismissed for two reasons. First, a judge in chambers in this Court has no authority to grant any of the judgments or declarations requested in the application. Second, it is inappropriate to consider any application other than one to excuse the non-compliance with **Rules** 62.02 and 62.05 given that, pursuant to **Rule** 62.05(3), the appeal is deemed to be dismissed by virtue of the failure to apply on the first Thursday following the filing of the notice of appeal for an order setting down the appeal for hearing.
- [6] The defects in the application were pointed out to Dr. Ofume in a letter filed by counsel for the respondents dated March 26<sup>th</sup> yet Dr. Ofume persisted in presenting the application in chambers today.

- [7] In addition to dismissing the application, I award costs which I fix in total at \$300 inclusive of disbursements to be paid by Dr. and Mrs. Ofume jointly and severally to the respondents forthwith.

Cromwell, J.A.