



THE COURT OF APPEAL

**Kelly J.
Irvine J.
Hogan J.**

2015/161

2014 No. 90 CA

ICS BUILDING SOCIETY

PLAINTIFF

AND

MARTIN MOONEY

DEFENDANT

EX TEMPORE JUDGMENT of Mr. Justice Kelly delivered on the 15th day of June 2015

1. This is an application which is made to the court on behalf of Mr. Mooney for an extension of time within which to appeal against an order made by the President of the High Court.
2. The order of the President was made on the 19th January, 2015 and the order was perfected on the 4th February, 2015.
3. As it is a final order of the High Court there is a period of 28 days from the date of its perfection within which to appeal. That time was not met, hence this application. But that is not the entire of the story by any means.
4. The order which was made by the President on the 19th January, 2015, was in respect of an application which was made by Mr. Mooney for an extension of time within which to appeal against an order of the Master of the High Court dated the 5th June, 2014. That order of the Master of the High Court was one which refused Mr. Mooney an extension of time within which to appeal against a decision of the Circuit Court of the 25th March, 2014.
5. Mr. Mooney failed to appeal the Circuit Court order within time. He then brought an application for an enlargement of time which itself was out of time. He failed to appear before the Master, either on the first or second calling on the return date of his motion and then desiring, apparently, to appeal that order of refusal he failed to appeal that order in time before the President.
6. Therefore, on the 19th January, 2015, when the President ultimately came to deal with the matter, he had a twofold application before him. He had an application seeking to extend the time for appealing from the Master's order of refusal and, if granted, an appeal from the Master's order of the 5th June, 2014. The order which was made by the President was one whereby he refused the application.
7. Today, an application is made seeking an extension of time within which to appeal that order of the President.
8. The first question that arises is whether or not this Court has any jurisdiction to deal with such an appeal. The matter, in my view, is governed by s. 39 of the Courts of Justice Act 1936 which states:-

"The decision of the High Court or of the High Court on Circuit on an appeal under this Part of this Act shall be final and conclusive and not appealable."

9. The order which was made by the President on the 19th January, 2015, was an order which was made in the context of an appeal being taken or sought to be taken by Mr. Mooney from a decision of the Circuit Court.
10. Consequently in my view this application is governed by the provisions of s. 39, which does not distinguish between interlocutory applications or applications of a final nature. It speaks of the decision of the High Court to be final and conclusive when it is dealing with an appeal from a decision of the Circuit Court.
11. That is what the President was dealing with. The order which he made, in my view, is the final order and is not capable of being appealed to this Court. It follows, therefore, that there can be no question of an extension of time within which to appeal.
12. Even if that view or jurisdiction is not correct, I am quite satisfied on the factual material that is put before the court that none of the conditions which normally have to met (vide *Eire Continental Trading Co. Ltd. v. Clonmel Foods Ltd.* [1955] I.R. 170) before the discretionary jurisdiction of this type is capable of being exercised have been met. Consequently, I would dismiss this application.

Ms. Justice Irvine: Yes I would also refuse the relief sought on precisely the same grounds that have been outlined by Mr. Justice Kelly.

Mr. Justice Hogan: I also agree with the ruling of Mr. Justice Kelly.