

Date \_\_\_\_\_  
Registrar \_\_\_\_\_  
Greffier \_\_\_\_\_

**Nagib Tajdin**

P.O. Box 38236 - 00623 Nairobi, Kenya

Tel: 254-723-693-844 Email: [nagib@tajdin.com](mailto:nagib@tajdin.com)

Court File #

A-59-11

A-60-11

February 24, 2011  
Federal Court of Appeal  
Registry Officer,  
Tel: (613) 947-6027  
Fax: (613) 952-3653  
E-mail: [CMT.Ottawa@cas-satj.gc.ca](mailto:CMT.Ottawa@cas-satj.gc.ca)

Ref: A-59-11 Federal Court of Appeal / Responding to Plaintiff's Motion to Dismiss the Appeal.

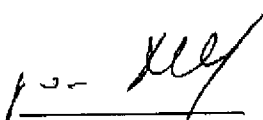
Dear Sirs / Madam,

Please bring this to the attention of the Court.

I am the co-defendant in the above mention Lawsuit; I am unrepresented and residing in Kenya.

In regards to Responding Motion Record of the Appellant/Defendant to Plaintiff's Motion to Dismiss the Appeal, I would like to inform the Court that I will rely on the written submissions of my co-defendant Mr Jiwa on the file ref: **A-60-11** and I request the Court to consider as if I have made the same written representations.

Respectfully yours,

  
\_\_\_\_\_  
Nagib Tajdin.

CC: Alnaz Jiwa  
CC: Brian Gray

**FEDERAL COURT OF APPEAL**

BETWEEN:

ALNAZ JIWA

Appellant/Defendant

and

HIS HIGHNESS PRINCE KARIM AGA KHAN

Respondent/Plaintiff

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2. Affidavit of Dafina Markowa sworn February 24, 2011
  - A E-mail from Brian Gray to Alnaz Jiwa and Nagib Tajdin dated February 8, 2011
3. *Videotron Ltee v. Nestrar Communications Inc.*, 2003 FCA 56
4. *Carlile v. Canada*, [1993] F.C.J. No. 841

**FEDERAL COURT OF APPEAL**

BETWEEN:

ALNAZ JIWA

Appellant  
(Defendant)

and

HIS HIGHNESS PRINCE KARIM AGA KHAN

Respondent  
(Plaintiff)

**WRITTEN REPRESENTATIONS**  
**(to the Plaintiff's Motion to Dismiss the Appeal)**

1. On January 7, 2011, Justice Harrington rendered his decision by giving reasons, which were sent to the Appellant by e-mail on January 10, 2011. Justice Harrington amended the reasons on January 13, 2011.

Affidavit of Dafina Markowa sworn February 24, 2011 (the "Markowa Affidavit")  
Responding Motion Record, Tab 2, para 2

2. On January 7, 2011, Justice Harrington also signed an Interlocutory Injunction, which was sent to the Appellant and his co-defendant, Nagib Tajdin, ("Tajdin") by e-mail on January 10, 2011.

Markowa Affidavit, Responding Motion Record, Tab 2, para 2

3. On February 7, 2011, the Appellant filed his Notice of Appeal from the decision of Justice Harrington in the Registry of the Federal Court of Appeal, as he was informed by the Federal Court Administration staff that in accordance with section 27(2)(b) of the *Federal Courts Act*, the appeal had to be filed within 30 days after the pronouncement of the decision on January 7, 2011.

Markowa Affidavit, Responding Motion Record, Tab 2, paras 3-7

4. On February 8, 2011, Respondent's counsel, Brian Gray, sent an e-mail to the Appellant and Tajdin saying: "I see that you have both filed appeals. Can you please provide us with copies of those appeals?"

Exhibit "A" to the Markowa Affidavit, Responding Motion Record, Tab 2A

5. On February 8, 2011, the Appellant served the Respondent by fax with his Notice of Appeal, and on February 14, 2011, Mr. Gray moved to dismiss the appeal on the ground that the appeal was premature as Justice Harrington has yet to issue his judgment.

Markowa Affidavit, Responding Motion Record, Tab 2, para 9

6. After reviewing the cases filed by Mr. Gray in support of the motion to dismiss the appeal as being premature, the Appellant sent his law clerk to speak with the Registry staff of the Federal Court of Appeal to seek clarification of the issue and to withdraw the Notice of Appeal, if necessary, and the Appellant's law clerk was advised by a registry officer of the Federal Court, as well as by their supervisor by the name of Stan (at the Toronto Registry), that the appeal was not premature and that in accordance with section 27(2)(b) of the *Federal Courts Act*, the appeal had to be filed on or before February 9, 2011.

Markowa Affidavit, Responding Motion Record, Tab 2, paras 11-14

7. Moreover, Stan advised the Appellant's law clerk that filing the Notice of Appeal after February 9, 2001, would be outside the 30 day limit for filing of Notice of Appeal and would not be accepted for issuing by the Registry staff of the Federal Court.

Markowa Affidavit, Responding Motion Record, Tab 2, paras 11-14

8. The *Federal Courts Act* does not define the word "pronounced". This Court in the case of *Vidéotron Ltée v. Netstar Communications Inc.*, 2003 CarswellNat 236, F.C.A. at paragraph 6 the Court states:

The authorities are clear that where an order or decision is not pronounced or delivered in public, the order or decision is not made until such time as the order or decision is entered by the Registry or when the parties are notified of the decision.

*Videotron Ltee v. Nestrar Communications Inc.*, 2003 FCA 56, at para 6

9. Although the Court discusses various cases, it does not seem clear to the Appellant and to the Registry staff of the Federal Court of when the time commences to run for the issuing Notices of Appeal.
10. The Appellant relied on the information given to him by the Federal Court staff. If the time for the filing of the Notice of Appeal began to run from the date of the order is settled, signed and entered, then the Appellant relies on the case of *Carlile v. Canada*, 1993 CarswellNat 965, Federal Court of Appeal, and submit that the appeal be stayed until Justice Harrington settles the judgment, and the Appellant be granted leave to amend his Notice of Appeal, if necessary.

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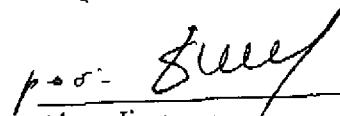
*Carlile v. Canada*, [1993] F.C.J. No. 841

11. Had Mr. Gray drawn the cases to the Appellant's attention and sought ways of resolving the issue on consent, there would not have been the need to bring the motion to dismiss the appeal.
12. Parties should be encouraged to attempt to deal with procedural difficulties amicably and to bring a motion only if necessary to avoid unnecessary costs. Mr. Gray failed to do so, and the Appellant submits that costs of this motion not be granted to the Respondent. The Court in the case of *Canada Trustco Mortgage Co. v. R.*, 2008 CarswellNat 4474, Federal Court of Appeal, 2008, relied on by the plaintiff, refused to grant costs (at paragraph 17).

*Canada Trustco Mortgage Co. v. R.*, 2008 CarswellNat 4474

Date: February 24, 2011

Respectfully submitted,



Alnaz Jiwa  
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Stouffville, ON  
L4A 7X5

jiwalaw@yahoo.ca

TO: OGILVY RENAULT LLP  
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Royal Bank Plaza, South Tower  
200 Bay Street, P.O. Box 84  
Toronto, Ontario M5J 2Z4

Brian W. Gray  
Kristin E. Wall

Tel: (416) 216-4000  
Fax: (416) 216-3930

Solicitors for the Plaintiff

**FEDERAL COURT OF APPEAL**

BETWEEN:

ALNAZ JIWA

Appellant  
(Defendant)

and

HIS HIGHNESS PRINCE KARIM AGA KHAN

Respondent  
(Plaintiff)

**AFFIDAVIT OF DAFINA MARKOWA**

I, Dafina Markowa, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AS FOLLOWS:

1. I am a law clerk with the appellant, Alnaz Jiwa, in this matter and as such have personal knowledge of the matters to which I hereinafter dispose to, except where otherwise stated to be based on information and belief, and where so stated I verily believe the same to be true.
2. Our office received the decision of Justice Harrington dated January 7, 2011, on January 10, 2011, by email and also received an amended decision on January 13, 2011.
3. Upon reviewing the decision, the appellant asked me to prepare documents for appealing the said decision. I primarily prepare court documents for filing in the Ontario Superior Court of Justice, as the appellant primarily conducts cases in the Ontario Superior Court.
4. Upon reading the Federal Court Rules, I called the Registry Office of the Federal Court and was referred to section 27(2)(b) of the Federal Courts Act, which states that an appeal from a final order shall be brought by filing a notice of appeal in the

Registry office of the Court within thirty days after the pronouncement of the judgment.

5. As I could not determine what "pronouncement of the judgment" meant, I called the Registry office again for a clarification and was advised that our notice of appeal had to be filed on or before February 7, 2011, even though we had received the reasons for decision on January 10, 2011.
6. As the answer appeared unusual, I pressed for a further clarification and the staff member placed me on hold telling me she would discuss the issue with a senior staff member. Upon returning, she confirmed that our appeal had to be filed with the Registry of the Federal Court on or before February 7, 2011.
7. Accordingly, on February 7, 2011, we filed our Notice of Appeal with the Registry of the Federal Court, so as to file it on time and not run into difficulty of bringing a motion for extension of time.
8. On February 8, 2011, we received an e-mail from counsel for the respondent, Brian Gary, which says: "'I see that you have both filed appeals. Can you please provide us with copies of those appeals?' Attached as Exhibit 'A' to this affidavit is a copy of the said e-mail.
9. On February 8, 2011, we served the respondent with our Notice of Appeal by sending a copy of same by fax to Mr. Gray.
10. February 14, 2011, Mr. Gray moved to dismiss the appeal on the ground that the appeal was premature as Justice Harrington has yet to issue his judgment.
11. Upon receiving the respondent's motion record, and reviewing the cases, the appellant asked me to attend at the Registry office to review the issues and to seek

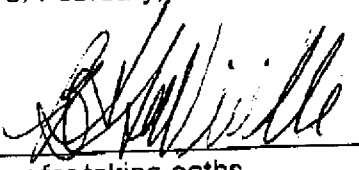


clarification of when the time commences to run and also to determine if we could withdraw the appeal.

12. I attended at the Registry office in Toronto, and spoke with the staff at counter No. 9 for assistance. She maintained that the days run from January 10, 2011, and upon pressing her that I wished to speak with a supervisor, she called a man by the name of Stan, who I believe was a supervisor.
13. After reviewing the issues with Stan, he advised me that our Notices of Appeal was not premature and that filing the Notice of Appeal after February 9, 2001, would be outside the 30 day limit for filing of Notice of Appeal and would not be accepted for issuing by the Registry staff of the Federal Court.
14. Stan further informed me that the advice given to me by telephone was wrong and that the time began to run from January 10, 2011, when the reasons for decision were received by us. Stan also told me that the Registry staff is trained and told to count from the date the reasons for decision are received by the parties.
15. I make this affidavit in response to the respondent's motion to dismiss the appeal in Federal Court file No. A-60-11 and for no other purpose.

SWORN at the City of Toronto  
in the Province of Ontario  
this 24<sup>th</sup> day of February, 2011

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)  
) Dafina Markowa

  
\_\_\_\_\_  
Commissioner for taking oaths.

This is Exhibit <sup>A</sup>..... attached to the  
Affidavit of Dafina Markowa  
sworn on February 24 2011

*[Handwritten signature]*

From: Gray, Brian (bgray@ogilvyrenault.com)  
To: nagib@tajdin.com; nagibtajdin@yahoo.com; jiwalaw@yahoo.ca; alnazjiwa@hotmail.com;  
Date: Tue, February 8, 2011 10:40:10 AM  
Cc: awhytenowak@ogilvyrenault.com;  
Subject: Appeal

I see that you have both filed appeals. Can you please provide us with copies of those appeals?

**Brian W. Gray**

T: 416.216.1905  
M: 416.917.1052  
F: 416.216.3930  
bgray@ogilvyrenault.com

Ogilvy Renault joins Norton Rose Group on June 1, 2011 / Le 1<sup>er</sup> juin 2011, Ogilvy Renault se joint au Groupe Norton Rose



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2/23/2011 9:30 PM

FEDERAL COURT OF APPEAL

BETWEEN:

ALNAZ JIWA

Appellant/Defendant

and

HIS HIGHNESS PRINCE KARIM AGA KHAN

Respondent/Plaintiff

FEDERAL COURT OF APPEAL  
COUR D'APPEL FÉDÉRALE  
Copy of Document  
Copie du document  
Filed / Déposé  
Received / Reçu  
FEB 24 2011  
Date \_\_\_\_\_  
Registrar \_\_\_\_\_  
Greffier \_\_\_\_\_

AFFIDAVIT OF SERVICE

I, Dafina Markowa, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AS FOLLOWS:

1. On February 24, 2011, I served Nagib Tajdin with the Appellant Alnaz Jiwa's  
Responding Motion Record to the Respondent/Plaintiff's Motion to Dismiss the  
Appeal, by sending a copy by e-mail to nagib@tajdin.com.

SWORN at the City of Toronto  
in the Province of Ontario  
this 24<sup>th</sup> day of February, 2011

Commissioner, etc.

)   
) \_\_\_\_\_  
) Dafina Markowa

FEDERAL COURT OF APPEAL

BETWEEN:

ALNAZ JIWA

Appellant/Defendant

and

FEDERAL COURT OF APPEAL  
COUR D'APPEL FÉDÉRALE

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Copie du document

Filed / Déposé

Received / Reçu

FEB 24 2011

Date

Registrar

Greffier

HIS HIGHNESS PRINCE KARIM AGA KHAN

Respondent/Plaintiff

AFFIDAVIT OF SERVICE

I, Dafina Markowa, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AS FOLLOWS:

1. On February 24, 2011, I served the Respondent/Plaintiff with the Appellant Alnaz Jiwa's Responding Motion Record to the Respondent/Plaintiff's Motion to Dismiss the Appeal, and the defendant Nagib Tajdin's letter to the Federal Court dated February 24, 2011, by leaving copies of the said documents with the receptionist at the law office of OGILVY RENAULT LLP, Suite 3800, Royal Bank Plaza, South Tower, 200 Bay Street, P.O. Box 84, Toronto, Ontario M5J 2Z4 to the attention of Brian W. Gray and Kristin E. Wall, solicitors for the plaintiff.

SWORN at the City of Toronto  
in the Province of Ontario  
this 24<sup>th</sup> day of February, 2011

Commissioner, etc.

)  
)  
)  
) Dafina Markowa