



REPUBLIC OF KENYA



KENYA LAW
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**Rockstocks Holding Limited v Nanyuki Ranching Limited (Civil Application
E722 of 2024) [2025] KECA 1579 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1579 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E722 OF 2024
DK MUSINGA, JA
OCTOBER 3, 2025**

BETWEEN

ROCKSTOCKS HOLDING LIMITED APPLICANT

AND

NANYUKI RANCHING LIMITED RESPONDENT

(Being an application for extension of time to file and serve an application for leave to appeal from the Ruling and Order of the High Court of Kenya at Nairobi (Mabeya, J.) delivered on 31st July 2024 in HCCOMMISC No. E197 of 2024)

RULING

1. The applicant's notice of motion dated 20th December 2024 seeks extension of time to file and serve an application for leave to appeal from the Ruling and Order of the High Court (Mabeya, J.) in HCCOMMISC No. E197 of 2024. In its affidavit in support of the application sworn by James Gichuki Mugambi, one of the directors of applicant, the applicant sets out the background of the application. He stated that the applicant initiated arbitration proceedings against the respondent, arising from a sale and purchase agreement for a parcel of land in Nanyuki dated 15th December 2022; that on 5th February 2024, the sole arbitrator held that the respondent was in breach of the contract and ordered a refund of Kshs.70 million plus interest and costs of the arbitration. The respondent challenged the award and successfully applied for its setting aside, on public policy violations.
2. Being dissatisfied with the ruling, the applicant filed a notice of appeal and applied for a certified copy of the ruling delivered on 5th August 2024. The applicant's advocate informally sought leave to appeal before the High Court but was directed to file a formal application before this Court. An application was made to this Court on 21st August 2024. An application for certified copy of the ruling was also made.



3. When the applicant's application for leave came up before this Court on 9th December 2024, the applicant's learned counsel sought to withdraw it upon realization that it had been filed out of time.
4. The applicant now states that the delay in filing the application for leave to appeal arose from administrative delays in obtaining certified copies of the ruling and order. The applicant believes that the intended appeal has high chances of success, and states inter alia, that the learned judge of the High Court erred in setting aside the arbitral award by indicating that the arbitrator rewrote the contract between the parties; by failing to appreciate that no fault was found on the part of the applicant; and by failing to appreciate that the arbitrator comprehensively addressed the issue of refund of the deposit of the purchase price of Ksh.70 million.
5. The applicant contends that the respondent shall not suffer any prejudice if the orders sought are granted.
6. The application is opposed. Eric Murungi, a director of the respondent, states in his replying affidavit that the applicant's application having been dismissed by the High Court on 31st July 2024, an application for leave to appeal ought to have been made within 14 days from the date of the decision, which was not done; that on 21st August 2024 the applicant filed an application for leave before this Court, which came up for hearing on 9th December 2024, but was withdrawn by the applicant upon realization that it had been made out of time; that the current application for extension of time is an afterthought and an abuse of the court process, and was filed 142 days from the date of the delivery of the impugned ruling.
7. The respondent further states that under rule 45 of this *Court's Rules*, there is no requirement to file a certified copy of the decision appealed from together with the application for leave and, therefore, the delay in obtaining certified copies of the impugned ruling does not suffice.
8. I have considered the submissions filed by both parties. Under rule 4 of this Court's Rules, the Court is empowered to extend time for doing any act authorized or required by the Rules, but the exercise of that discretion has to be done judiciously. In so doing, the Court has to consider several factors, among them, the length of the delay; the reason for the delay; whether the intended appeal is arguable; the degree of prejudice to the respondent if the application is granted; whether the applicant acted with diligence; and whether there is a public interest element in the matter. (See *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR).
9. It is not in dispute that the current application for leave to appeal was filed after a period of 4 months, 2 weeks and 6 days.(a total of 142 days) from the date of delivery of the High Court ruling. That delay per se cannot disentitle an applicant from grant of leave, what is critical is whether there are good reasons for the delay. The applicant alleges that the delay in filing the application was caused by 'administrative delays' in obtaining certified copies of the ruling of 31st October 2024 and the order thereof. That is not a requirement under rule 45(3)(a) of this Court's Rules which states as follows:
 - a. "An application for leave to appeal shall, where practicable, be accompanied—
 - a. by a copy of the decision, including the reasons therefor (if any) against which leave to appeal is sought."



10. Rule 45(4) further stipulates that:

“Where the documents referred to in subrule (3) have not been filed together with the application, the applicant shall file and serve the documents at least twenty-four hours before the application is heard.”

11. It was therefore not necessary for the applicant’s advocate to apply for a certified copy of the ruling and the order and wait for the supply of the same before lodging an application for leave to appeal. Only a copy of the ruling was necessary.

12. The respondent submitted that a copy of the ruling was uploaded on the Judiciary Case Tracking System on 31st July 2024, the same day the ruling was delivered. That was not disputed by the applicant. If that was the case, and I have no reason to believe that it was not, nothing prevented the applicant from filing the application for leave to appeal within 14 days from the date of the impugned ruling. I therefore find and hold that there was inordinate delay in filing the application, and the delay was not sufficiently explained. Even after the withdrawal of the application dated 20th August 2024 on 9th December 2024, the applicant waited for another 11 days to file the current application.

13. Apart from the unexplained delay in filing the application for leave, it is also doubtful whether the application for leave meets the threshold set by the Supreme Court in *Nyutu Agrovet Limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators – Kenya Branch (Interested Party)* [2019] eKLR. The applicant has not set out exceptional reasons for grant of leave, and neither has the applicant demonstrated that the learned judge in setting aside part of the arbitral award travelled outside the provisions of section 35(2) and (3) of the *Arbitration Act*, or that his decision was so grave and manifestly wrong, or that the decision has completely closed the doors of justice to the applicant.

14. For these reasons, I find the application unmeritorious and dismiss it with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2025.

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

