

**IN THE COURT OF APPEAL
AT NAIROBI**

(CORAM: TUIYOTT, JA (IN CHAMBERS))

CIVIL APPLICATION NO. NAI E524 OF 2025

BETWEEN

MAS CONSTRUCTION LIMITED.....APPLICANT

AND

ABDUL WAHEED SHEIKH.....1ST RESPONDENT
ABDUL HAMEED SHEIKH.....2ND RESPONDENT
HASSAN ABDI SALAN 3RD
RESPONDENT MAHAT ADAN ABDIRAHMAN IBRAHIM
4TH RESPONDENT JOSEPH NDERITU T/A
JOGANDRIES AUCTIONEERS 5TH
RESPONDENT
NAIROBI CITY COUNTY.....6TH RESPONDENT
CHIEF LAND REGISTRAR 7TH RESPONDENT

*(Being an application for extension of time to file an application seeking certification and leave to apply to the Supreme Court from the Judgment of the Court of Appeal at Nairobi (**Musinga, (P), M'Inoti & Ochieng, JJ.A.**) delivered on 28th February 2025*

in

Civil Appeal No. E789 of 2023)

RULING

- [1] An appeal from this Court to the Supreme Court involving a matter of general public importance shall be made upon certification by this Court or the Supreme Court. However, an application for certification should be filed before and determined by the Court of Appeal at the first instance. Such application ought to be made within 30 days of delivery of the judgment sought to be impugned.

- [2] MAS Construction Limited, the applicant, is desirous of appealing against the decision of this Court delivered on 28th February 2025 in Nairobi **Civil Appeal No. E789 of 2023**, but failed to file the application for certification on time and now seeks extension of time through a notice of motion dated 18th August 2025.
- [3] **Ahmed Adan Ali**, a director of the applicant company explains the delay in an affidavit sworn on 25th August 2025. Germane to the matter at hand is that the applicant was caught up in a parallel and protracted litigation between the same parties at the Environment and Land Court (ELC) which involved an application seeking to orally cross-examine its directors and permission by the respondents to execute directly against its directors. Aggrieved by the permission granted by the ELC, the applicants appealed against it to this Court and sought stay. On 7th August 2025, the ELC issued an order of notice to show cause in favour of the 1st and 2nd respondent as to why the directors should not be committed to civil jail. This Court is told that those proceedings required the applicant's active involvement and legal attention, consumed substantial time and resources, occasioning the delay in lodging the application for certification. The applicant asserts that the delay is neither deliberate nor inordinate.
- [4] The respondents have neither opposed the motion nor filed submissions.

[5] I have given regard to the material before me and the submissions filed on behalf of the applicant.

[6] The discretion granted to this Court by Rule 4 of the Court of Appeal Rules is to be exercised judiciously within the parameters set in settled law. These are; first, the length of the delay, secondly, the reasons for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly the degree of prejudice to the respondent if the application is granted (see Leo Sila

Mutiso v Rose Hellen Wangari Mwangi - Civil Application No. Nai

251 of 1997).

[7] The explanation of delay given by the applicant is that it was consumed in battling proceedings in the ELC that sought to have its directors personally answer to the decree issued by that court. Attached to the affidavit of **Chueb Adan Ali**, sworn on 25th August 2025, are copies of applications before the ELC in that regard and the order granting permission to execute. As this is not controverted, I find no reason to disbelieve it and I accept the reason as a plausible explanation for the failure to act with alacrity.

[8] The application for certification ought to have been filed by 28th March 2025 and the motion before Court dated 18th August 2025 was brought about six months later. This delay is not overly inordinate and given the explanation put forward, is excusable.

[9] In leaning towards granting the extension, this Court also considers that as the respondents have not filed an answer to the motion, then there is no evidence that to grant it will prejudice them unduly.

[10] The notice of motion dated 18th August 2025 is hereby allowed. The application shall be filed and served within fourteen (14) days of this order. No order as to costs.

Dated and delivered at Nairobi this 30th day of January 2026.

F. TUIYOTT

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.