



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya National Highway Authority v SBI International Holdings (Kenya) (Civil Application E382 of 2025) [2026] KECA 402 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KECA 402 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E382 OF 2025  
W KARANJA, JA  
FEBRUARY 27, 2026**

**BETWEEN**

**THE KENYA NATIONAL HIGHWAY AUTHORITY ..... APPLICANT**

**AND**

**SBI INTERNATIONAL HOLDINGS (KENYA) ..... RESPONDENT**

*(Being an application for extension of time to file Notice of Appeal out of time and stay of execution pending an appeal from the Ruling of the High Court at Nairobi (JV. M. Mochache, J.) dated 21st March 2025 in HCCC No. E289 of 2022)*

**RULING**

1. By a notice of motion dated 30<sup>th</sup> May 2025, through the firm of Dulo & Company Advocates, the applicant seeks in the main; an order for leave to file the notice of appeal dated 2<sup>nd</sup> May 2025; and upon the leave being granted, that the same be deemed as duly filed.
2. The applicant also seeks stay of execution of the ruling and order of Hon. Justice V. M. Mochache delivered on 21<sup>st</sup> March 2025. Needless to say, however, applications for stay of execution can only be heard by a full bench of 3 Judges. I have no jurisdiction to entertain that prayer. In any event, an application for stay of execution can only be entertained if there is a notice of appeal on record filed in accordance to Rule 77 of the Court of Appeal Rules. Nonetheless, rather than strike out the entire application for being omnibus, I will deal with the prayer for leave to file the notice of appeal out of time.
3. The application is premised on the grounds on its face and is supported by the affidavit of Eng. Clarence Karot, the Deputy Director of Development of the applicant. From the said grounds and depositions, the applicant claims that the impugned ruling was delivered on a mention date and without notice to them. The applicant filed the notice of appeal before the trial court on 2<sup>nd</sup> May 2025 – 6 weeks of the delivery of the ruling, which delay the applicant maintains is not inordinate and is excusable.



4. According to the applicant, the “ex-parte ruling” was issued against the law, as the applicant’s application to have the matter stayed pending referral to arbitration was still pending before the court. For this reason, the applicant avers that it has a good appeal with high chances of success.
5. The applicant filed submissions which were duly served on the respondent on 2<sup>nd</sup> July 2025. I note, however, that there was no response to the submissions. The affidavit of service on record shows that the notice of motion was served on the respondent along with the submissions the same day. The respondent did not file any response to the application, nor did it file submissions in response. The notice of motion is, therefore, not contested.
6. I, nonetheless, need to consider the application against the applicable law to see if it meets the threshold set for applications of this nature.
7. The law in this area is settled. See *Fakir Mohammed -vs- Joseph Mugambi & 2 others* [2005] eKLR (Civil Application No. Nai. 332 of 2004) where the Court held that;

“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possible) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance-are all relevant but not exhaustive factor.”

See also *Mwangi -vs- Kenya Airways Ltd* (2003) KRL 486.

8. As stated earlier, the delay was for about 6 weeks. It was stated that the ‘Ruling’ was issued ex-parte on a mention date, and that the applicant’s application for stay of proceedings pending referral to arbitration was still pending before the High Court. All this is not controverted.
9. My conclusion is that the application is not frivolous, the delay involved was not inordinate and the same has been sufficiently explained.
10. Accordingly, I am persuaded that the extension of time sought is merited. I allow the application and order that the Notice of appeal dated 2<sup>nd</sup> May 2025 is deemed to have been filed within time. I order the notice be served on the respondent within 7 days from the date hereof. The record of appeal be served within 14 days of service of the notice of appeal. In default, these orders will stand vacated. I make no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2026.**

**W. KARANJA**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

