

**IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: W. KARANJA, J.A. (IN CHAMBERS))**

**CIVIL APPLICATION NO. E365 OF 2025**

**BETWEEN**

**NANCHANG MUNICIPAL ENGINEERING  
DEVELOPMENT GROUP COMPANY KENYA LIMITED.. APPLICANT**

**AND**

**GALANA OIL KENYA LIMITED.....1<sup>ST</sup>  
RESPONDENT SANYI JITUAN SENSEN INVESTMENT LTD.....  
2<sup>ND</sup> RESPONDENT**

*(Being an application for extension of time to appeal out of time in the  
Court of Appeal against the ruling by the High Court at Nairobi (P.M.  
Mulwa, J.) dated 13<sup>th</sup> March 2025*

*in  
HCCCOMMISC No. E204 of 2023)*

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**R U L I N G**

1. The applicant has moved this Court vide a notice of motion dated 18<sup>th</sup> June 2025 under certificate of urgency. The motion is brought under, among others, **Rules 4** and **43** of the **Court of Appeal Rules**. Prayer 2 of the application is worded as follows:-

***“That this Honourable Court be pleased to grant leave to file an appeal out of time against the ruling delivered on 13<sup>th</sup> March 2025 in HCCCOMISC/E204 of 2023 delivered by Justice Peter M. Mulwa.”***

This prayer is, in my considered view, ambiguous to some extent because it can be translated to mean that the applicant is applying

for leave to appeal as the pre-requisite required in some arbitral matters.

2. I have no jurisdiction to grant such leave and so I will steer clear of that prayer and deal with prayers No. 3 and 4 which seek extension of time to file and serve the Notice of appeal, memorandum of appeal and record of appeal. Prayer No. 4 prays that the Court be pleased to deem the Notice of appeal and the memorandum of appeal, already filed, to be deemed as having been filed within the prescribed time.
3. The application is predicated on the nine grounds on its face and supported by the affidavit sworn by Xu Xiaobing, a director of the applicant company, on 16<sup>th</sup> June 2025. The main reason proffered by the applicant for the delay in filing the Notice of appeal is that the applicant's erstwhile advocates failed to move with dispatch after being given instructions to file the appeal. The impugned ruling was delivered on 13<sup>th</sup> March 2025, and the Notice of appeal should have been filed by 26<sup>th</sup> March 2025.
4. According to the applicant, the Notice of appeal was actually filed on 26<sup>th</sup> March, but he blames the deputy registrar of the High Court for not endorsing or signing it on time. In my view, however, although the said Notice of appeal is annexed to the supporting

affidavit, there is no evidence of payment for the filing of the same, and it could not have been lodged before payment was made. The blame of the Deputy Registrar has, therefore, no basis whatsoever and it is doubtful that such a notice of appeal was even filed at the registry as claimed.

5. The application is opposed through the replying affidavit sworn by Raphael Kimani Kamau, the 1<sup>st</sup> respondent's Chief Financial Officer, on 14<sup>th</sup> August 2025. Mr. Kimani avers that the application is not properly before this Court as the applicant has not demonstrated that it has filed an application for leave to appeal, either the High Court or before this Court. The 1<sup>st</sup> respondent, goes on to address the issue of leave and whether there are grounds for allowing such leave to appeal. As stated earlier, this is not an application for leave to file the appeal, and I will not address those issues.
6. The 1<sup>st</sup> respondent also deposes that no valid reasons have been given for the delay, and further that there is no evidence placed before the Court to show that the firm of Maina Mucimi & Co. Advocates ever received any instructions to prefer the appeal; and so, mistake of counsel has not been demonstrated.

7. The respondent also states that there has been part execution of the decretal amount and this application is just a ruse and an afterthought meant to frustrate execution of the award. I am asked to dismiss this application.
8. The applicant filed a supplementary affidavit dated 15<sup>th</sup> December 2025 addressing the issues raised in the 1<sup>st</sup> respondent's affidavit. The issue of "leave to appeal" has been addressed substantially. As I stated earlier in this ruling, this is not an application for leave to file the appeal. My understanding of prayer 2 which I replicated in the Ruling earlier, is that it was seeking leave to file the appeal itself out of time, which as I stated, I have no jurisdiction to do.
9. I have considered the notice of motion, the affidavits filed by the parties and the submissions. There is no doubt that the appeal itself cannot be filed without leave of the Court as the applicant does not have an automatic right to file the appeal. The applicant can, however, file a notice of appeal and subsequently file the application for leave. My understanding of this application is that the applicant intends to file the Notice of appeal, and presumably file the application for leave later.
10. **Rule 41(1)(b)** of the **Court of Appeal Rules** provides:-

***"Where an appeal lies with the leave of the court, application for such leave shall be made -***

**(i) In the manner laid down in Rules 44 and 45 within 14 days after the decision against which it is desired to appeal.”**

There is evidently no application for extension of time to file the application for leave, which should be filed within 14 days of the impugned ruling. If such leave to file the application was granted, such a ruling would have been annexed to this application.

11. I have considered the Notice of motion before me, the rival affidavits and submissions filed by the parties. I make the following pertinent observations:

- (i) There was no demonstration that the Notice of appeal was actually filed on 26<sup>th</sup> March as claimed as no payment receipt from the court was annexed.
- (ii) There was no plausible reason placed before me for the delay.
- (iii) There is no application seeking leave to appeal filed before this Court; nor is there any application for extension of time to file such an application; and that is a hurdle the applicant needs to overcome first.
- (iv) These proceedings relate to arbitration where the final award was issued almost 3 years go. One of the fundamental tenets of arbitration and the reason parties choose that mode of settlement of disputes is its

timeliness, which will

not be achieved given that 3 years down the road, no application for leave; or for extension of time to file the said application has been filed.

12. For the foregoing reasons, I find the application devoid of merit and dismiss it with costs to the 1<sup>st</sup> respondent.

**Dated and delivered at Nairobi this 27<sup>th</sup> day of February 2026.**

**W. KARANJA**

.....  
**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR.**

