

**IN THE COURT OF  
APPEAL AT NAIROBI**

**(CORAM: HASSAN, J.A (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI E622 OF**

**2025 BETWEEN**

**SINOHYDRO CORPORATION LIMITED.....APPLICANT**

**AND**

**SHENGTAI COMPANY LIMITED.....RESPONDENT**

*(An application to have notice of appeal be deemed as filed from the judgment of High Court of Kenya at Nairobi (Gikonyo, J.) delivered on 25<sup>th</sup> September 2025)*

**in**

***HCCOMM No. E065 of  
2022***

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**RULING**

1. By way of a Notice of Motion dated 27th October, 2025, the applicant invokes the provisions of **rule 4** of this Court seeking, in principle, an order that the notice of appeal filed and served on 23rd October, 2025 be deemed as duly filed within the requisite time.
2. The grounds in support of the application are borne on the face thereof and in the affidavit in support sworn by Fiona Tambo, an Advocate at the firm of Owiti & Kiarie Advocates LLP, who is on record for the applicant.

3. The application is opposed by the respondent by way of a replying affidavit sworn by the respondent's Director on 13th November, 2025. The application was canvassed by way of written submissions. The applicant's submissions are dated 28th November, 2025, while those of the respondent are dated 1st December, 2025.
4. In summary, the Applicant's averments and submissions are that the trial Court delivered its Judgment on 25th September, 2025, wherein it dismissed the Applicant's claim of Kshs.25,500,000/=. That it was not until 2nd October 2025 that the applicant's advocates received a copy of the Judgment, whereupon they advised the applicant of its contents. However, given that the applicant's officials are based in China, the advocates encountered difficulty in promptly securing instructions on whether to lodge an appeal.
5. The applicant argues that the delay in filing the record of appeal was not inordinate. It arose, firstly, from the difficulty experienced by the applicant's advocates in obtaining a copy

of the trial court's judgement and, secondly, from the challenges

encountered in securing timely instructions to lodge an appeal from the applicant's officials who are based in China.

6. It is contended that the intended appeal is not only arguable but also has a high chance of success. However, a draft memorandum of appeal has not been annexed to the affidavit in support of the application. A further averment is that no prejudice will befall the respondent if the application is allowed.
7. The respondent on its part argues that the applicant has not demonstrated a good and sufficient cause for the delay in filing the notice of appeal. That the applicant has been negligent and filed the instant application with undue delay, which has not been adequately explained. The respondent also argues that the applicant has not sought leave to appeal out of time but instead has sought an order to deem the notice of appeal served out of time as duly filed within the requisite time. On whether the intended appeal is arguable, the respondent avers that the appeal is not arguable and that the respondent will suffer prejudice and injustice if the application is not allowed.

8. I have considered the application, the grounds in support thereof, the submissions, as well as the law. **Rule 4** of the Court of Appeal Rules does not provide for factors the court ought to consider in an application for extension of time, but courts have devised appropriate principles to be applied in achieving a 'just' decision in the circumstances of each case. The case of **Leo Sila Mutiso v Rose Hellen Wangari Mwangi** [1999] which is the *locus classicus*, laid down the parameters as follows:

9. As regards the length of delay, in **Sentrim Kenya Limited v CFC Stanbic Bank Limited** [2021] KECA 648 (KLR) as

was

cited by the applicant, this Court stated that there is no maximum or minimum period of delay set out under the law.

However, the reason or reasons for the delay must be

reasonable and plausible. In **Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet** [2018] eKLR, this Court stated:

***"The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There have to be valid and clear reasons upon which discretion can be favourably exercised."***

10. In the instant case and as regards the length of the delay, it is indeed not in dispute that the impugned judgment was delivered on 25th September, 2025. Pursuant to the provisions of **rule 77 (2)** of the rules of this Court, the period for filing the notice of appeal (14 days) lapsed on or about 9th October, 2025. The length of the delay is about 14 days, which delay, in my view, is not inordinate/unreasonable for reason(s) that I will allude to shortly.

11. I have considered the reason given for the delay, and I consider the same to be reasonable/plausible for the following reason: given that the applicant's officials are

based in China, it is plausible that the advocates would experience difficulty in promptly obtaining instructions to lodge an appeal. Cross-

border representation inevitably carries inherent complexities, particularly in matters requiring timely communication and decision-making. It must be emphasized that Advocates are duty-bound to act on their client's instructions, without which they cannot proceed. I find the explanation satisfactory.

12. Ultimately therefore, I am of the considered opinion that the delay herein has been sufficiently explained to the satisfaction of this Court.
13. As to the arguability or otherwise of the intended appeal, it would not be in my place to determine the same sitting as a single judge, and I will therefore not delve further into this issue.
14. Finally, on prejudice, the respondent avers that if the instant motion were to be allowed, it would suffer prejudice in view of the fact that it has already taken steps in enjoying the fruits of the judgment. These steps have not been explained to the court.
15. The totality of my findings, therefore, is that the applicant

has demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion

pursuant to **Rule 4** of this Court to extend time within which to file the intended appeal.

16. Accordingly, the applicant's motion dated 27th October, 2025, is merited, and the same is hereby allowed as prayed. The applicant shall proceed to file the intended appeal within a period of 30 days from the date of this ruling, failure to do which will result in these orders being vacated.
17. The costs of this motion shall abide the outcome of the intended appeal.

**Dated and delivered at Nairobi this 13<sup>th</sup> day of March, 2026.**

**AHMED ISSACK**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**