

**IN THE COURT OF  
APPEAL AT  
NAIROBI**

**(CORAM: MUNYAO, J.A-IN CHAMBERS)**

**CIVIL APPLICATION NO. NAI. E696 OF**

**2025 BETWEEN**

**POSTAL CORPORATION OF KENYA.....APPLICANT**

**AND**

**STRAIGHT SECURITY SERVICES LIMITED.....RESPONDENT**

*(An application for extension of time to file a notice of appeal from the ruling of the High Court at Nairobi (Olel, J.) dated 14<sup>th</sup> October 2025*

*in*

***HCCOMMARB No. E013 of 2025)***

***\*\*\*\*\****

**RULING**

1. The application before me is that dated 21 November 2025 vide which **Postal Corporation of Kenya**, seeks an extension of time for the filing of a Notice of Appeal against the ruling of the High Court delivered on 24 October 2025 in the case **Nairobi HCCOMMARB No. E013 of 2025**. There is also a prayer in the application to deem the draft notice of appeal annexed to the supporting affidavit in support of the application, as duly filed and served upon payment of the requisite court fees, and for the costs of the application to be costs in the intended appeal.

2. The application is based on grounds that the applicant has an arguable appeal with a high probability of success; that the delay was occasioned by the High Court Registry, because a copy of the ruling was not made available until 5 November 2025 when it was uploaded into the e-filing system; that on receipt of the ruling the applicant undertook necessary internal consultations to obtain formal instructions to appeal, which process was concluded on 15 November 2024; that the delay is not inordinate and is explained; that the respondent will not suffer any prejudice which cannot be adequately compensated by an award of damages; and that it will be in the interests of justice to allow the application so that the applicant can exercise its right of appeal.
3. The application is supported by the affidavit of **Jane Masara**, the applicant's Assistant Manager, Legal. She has deposed that the ruling was delivered on 14 October 2025, but the same was uploaded on 5 November 2025, after the 14 day period for filing the notice of appeal had lapsed. She deposes that once the ruling was obtained, their advocate, **Mr. Jeff Nduko Bosire**, forwarded it to them and the applicant was required to

undertake formal internal consultations to authorize the appeal, given its significant legal and financial implications. She deposes that this internal process was concluded on 15 November 2024 and instructions to appeal given to the advocate. She deposes that the appeal raises weighty legal issues and she has particularly singled out the interpretation of Section 35 and 37 of the Arbitration Act.

4. The respondent opposes the application vide the replying affidavit of **Francis Mwenda Munene**, who is her director. He contends that the applicant has not provided documentary proof to support the claim that the High Court Registry delayed in uploading or availing the impugned ruling; that the applicant has not exhibited any correspondences addressed to the High Court Registry requesting for a copy of the ruling but waited for the same to be uploaded which demonstrates indolence; that registry delays to not absolve a litigant from complying with statutory timelines particularly when no follow-up correspondence is exhibited; that the applicant's internal consultations is not a valid reason for delay and that administrative processes in an institution do not override

procedural timelines; that the applicant's advocate was present when the ruling was delivered virtually and was aware of the outcome on the same day and the internal consultations ought to have commenced immediately thereafter; that the applicant has not demonstrated that the intended appeal is arguable or raises any novel or weighty issues deserving this court's intervention; that granting the application will occasion the respondent prejudice by prolonging the matter; and that the respondent is entitled to the fruits of the ruling.

5. Alongside the replying affidavit, the respondent also filed a notice of preliminary objection, asserting that this court lacks jurisdiction to entertain the application and intended appeal by virtue of Sections 10, 35 and 39 of the Arbitration Act; that the applicant has not demonstrated that the parties agreed to a right of appeal under Section 39 of the Arbitration Act; and that no leave has been sought or obtained under Section 39 (3) (b) of the Arbitration Act.
6. A supplementary affidavit, yet again sworn by **Jane Masara**, was filed by the applicant. She asserts that the ruling was

indeed uploaded on 5 November 2025 and has attached  
the

screenshot of the e-filing case history. On the preliminary objection, she avers that it is premised on a misinterpretation of Section 39 of the Arbitration Act. She elaborates that the High Court judge erred in treating the defence of enforcement under Section 37 as a time barred application to set aside under Section 35 of the Arbitration Act, thus creating a unique jurisdictional error which this court has residual power to correct.

7. Both counsel for the applicant and counsel for the respondent filed written submissions which I have taken into account before arriving at my decision.

8. This is an application for extension of time to file a notice of appeal out of time and the principles are now well settled.

Thus, in the case of **Fakir Mohamed v Joseph Mugambi & 2 others [2005] KECA 340 (KLR)**, Waki J.A, commented as follows:

***“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, (possibly) 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 factors: See Mutiso vs Mwangi Civil Appl. NAI. 255 of 1997 (ur), Mwangi vs Kenya Airways Ltd [2003] KLR 486, Major Joseph Mwereri Igweta vs Murika M'Ethare & Attorney General Civil Appl. NAI. 8/2000 (ur) and Murai v Wainaina (No 4) [1982] KLR 38."***

9. I have the foregoing in mind as I determine this application.

10. Before I embark on the substance of the matter, it may be relevant to set out a little background on the dispute between the parties herein.

11. The parties entered into a contract dated 20 April 2021 for provision of guarding and security services. That contract contained an arbitration clause. There must have been an issue relating to the performance of the contract for a dispute was referred to a single arbitrator. The applicant did not participate in the appointment of the arbitrator nor the arbitration proceedings. The dispute was heard by the single arbitrator who rendered an award on 2 October 2024 in

favour of the

respondent for the sum of Kshs. 7,027,377/= and interest at

14% per annum from January 2023 until payment in full. He also assessed costs in favour of the respondent in the sum of Kshs. 243, 600/= to attract interest at 14% per annum from 2 November 2024 until payment in full. The respondent then filed an application before the High Court inter alia under Section 36 of the Arbitration Act, and **Rules 4** and **5** of the **Arbitration Rules, 1997**, to have the award adopted by court and for a decree to issue. The applicant contested the adoption of the award contending that they did not agree on the appointment of the arbitrator. In its ruling delivered on 14 October 2025, the High Court allowed the application. It is this ruling that forms the subject of this application.

12. The applicant of course did not file its notice of appeal within time. It attributes this to the delay by the High Court Registry in uploading the decision, and the need for internal consultations prior to instructions being issued to its counsel. The respondent counters this by arguing that counsel for the applicant was present when the ruling was delivered and that the applicant is not excused from adhering to the prescribed timelines. On this, I am alive to the fact that the applicant is a

public corporation and I am persuaded that it may not have acted without first seeing the ruling. I also observe that upon making the decision to appeal on 15 November 2025, this application was drawn just six days thereafter on 21 November 2025. The time to lodge the notice of appeal expired on 28 October 2025 meaning that this application was lodged 24 days later. I think in the circumstances of the case, the delay is not inordinate.

13. The other argument raised by the respondent is that there is no right to appeal and that no leave has been sought. At this juncture, I would not wish to go into the argument of whether or not there is a right to appeal or not. That is a matter touching on the substance of the appeal and can be argued if the appeal is filed. On the question of leave to appeal, Rule 77

(4) provides that where leave to appeal is required, it is not necessary for one to first seek leave before lodging the notice of appeal. Whether to grant leave to appeal or not, is not what is before me and indeed that can only be dealt with by a bench of three as prescribed in Rule 55 (2) of the Court of Appeal Rules, 2022. What I see is that one can lodge a notice

of appeal prior

to leave being granted. Though not dispelling that lack of leave may be a consideration, depending on the circumstances of the case, I would think that given that the law allows one to file a notice of appeal even prior to leave being granted, then the fact that no leave has been applied for, is not an outright bar to one applying to file a notice of appeal out of time.

14. The other argument raised is that if the application is allowed then this will be tantamount to denying the respondent the fruits of the judgment. I do not agree because the filing of the notice of appeal is merely aimed at setting the foundation to appeal. It does not stay execution of the decree and therefore granting leave to file the notice of appeal out of time does not deny the respondent the fruits of the judgment.

15. Finally, I see that the applicant purposes to raise some legal points regarding the interpretation of Sections 35 and 39 of the Arbitration Act. That cannot be said to be frivolous.

16. For the foregoing reasons, I am persuaded to exercise my discretion in favour of the applicant. Although the

applicant asked that the draft notice of appeal be deemed  
filed on  
payment of the requisite fees, I think that is not good practice

as expounded by the Supreme Court in the case of **Salat v Independent Electoral and Boundaries Commission & 7 others (Application 16 of 2014) [2014] KESC 12 (KLR) (Civ)**

**(4 July 2014)** (Ruling). Good practice would be that the court first grants the leave, then the party files the document within the time that the court stipulates. In this instance, I direct the applicant to formally file the notice of appeal within the next seven (7) days and serve it in the usual manner.

17. On costs, each party to bear his/her own costs.

Orders accordingly.

**Dated and delivered at Nairobi this 25<sup>th</sup> day of March, 2026.**

**MUNYAO SILA**

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

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

**Signed**

**DEPUTY REGISTRAR.**