



**China Tech International Corp v Sakima Investment Sarl (Civil Application
E070 of 2023) [2024] KECA 543 (KLR) (24 May 2024) (Ruling)**

Neutral citation: [2024] KECA 543 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION E070 OF 2023
AK MURGOR, KI LAIBUTA & GV ODUNGA, JJA
MAY 24, 2024**

BETWEEN

CHINA TECH INTERNATIONAL CORP APPLICANT

AND

SAKIMA INVESTMENT SARL RESPONDENT

*(Being an application to strike out the Notice of Appeal from the
Judgment and Decree of the High Court of Kenya at Mombasa (Magare
Kizito, J.) delivered on 24th July 2023 in Misc. App. No. 144 of 2023)*

RULING

1. By a Miscellaneous Application dated 7th June 2023 and filed in the High Court of Kenya at Mombasa in HC Misc. App. No. 144 of 2023, the applicant, China Tech International Corp, sought recognition and enforcement of an arbitration award dated 22nd April 2021 issued in Hong Kong by Desmond Ang, sole arbitrator, through the International Court of Arbitration. The award in issue was against the respondent, Sakima Investment SARL, which unsuccessfully opposed the applicant's application aforesaid.
2. In its judgment and decree dated 24th July 2023, the High Court (Kizito Magare, J.) allowed the applicant's application and adopted the award as a decree of the court.
3. Dissatisfied by the learned Judge's decision, the respondent gave notice of its intention to appeal to this Court vide its notice of appeal dated 25th July 2023 and lodged on even date. The notice was served upon the applicant's counsel, M/s. Ndegwa, Sitonik & Karina, out of time on 11th August 2023.
4. Thereafter, the applicant filed a Notice of Motion dated 15th August 2023 pursuant to rule 86 of the Rules of this Court seeking orders to strike out the respondent's notice of appeal dated 25th July 2023



on the ground that the notice aforesaid was served upon them out of time, ten (10) days later than the period allowed under rule 79(1) of the Court of Appeal Rules.

5. The applicant's Motion was supported by the annexed affidavit of Mr. Simon Karina, counsel for the applicant, essentially deposing to the ground on which the application was anchored. In further support of the applicant's Motion, learned counsel filed written submissions, a schedule and bundle of authorities dated 24th January 2024 citing the cases of Nzai & 57 Others v. Invesco Assurance Co. Ltd. [2022] KECA 66 (KLR); Mistry Premji Ganji Investments Limited v. KENHA [2019] eKLR; Nyaribari & Another v. Kenya Alliance Co. Ltd. [2022] KECA 696 (KLR); and Hanos (K) Limited v. Dhiren Mohanlal Shah [2021] eKLR, in which the notice of appeal had been served out of time, thereby prompting this Court to strike it out on application pursuant to rule 84 (now rule 86 of the 2022 Rules).
6. It is noteworthy that the respondent did not file any affidavit in reply to the applicant's Motion. Neither did its counsel on record, M/s. Ameli Inyangu & Partners, file submissions or attend at the hearing of the applicant's Motion despite having been duly served with the applicant's Motion by email on 17th August 2023 and, subsequently with a hearing notice, by the Deputy Registrar on 26th January 2024.
7. Rule 79(1) of this Court's Rules requires that a notice of appeal be served before or within 7 days from the date on which it is lodged. That rule reads:

79.

(1) An intended appellant shall, before or within seven days after lodging notice of appeal under rule 77, serve copies of the notice on all persons directly affected by the appeal: Where the notice is served out of time, the Court has power to strike it out on such application as is before us pursuant to rule 86 of the Rules of this Court, which reads:

86. A person affected by an appeal may, at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground –
 - a. that no appeal lies; or
 - b. that some essential step in the proceedings has not been taken or has not been taken within the prescribed time:

Provided that an application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days after the date of service of the notice of appeal or record of appeal, as the case may be.

8. In MAE Properties Limited v Joseph Kibe & Another [2017] eKLR, this Court had this to say on the timelines prescribed under the Rules:

“We have said on numerous occasions that the Rules of Court exist for the purpose of orderly administration of justice before this Court. The timelines for the doing of certain things and taking of certain steps are indispensable to the proper adjudication of the appeals that come before us. The Rules are expressed in clear and unambiguous terms and they command obedience...

Failure to comply with the timelines set invites sure consequences.”



- 9. We are satisfied that the applicant’s Motion satisfies the timelines prescribed under rule 86, the same having been filed 17th August 2023 only 6 days from the date on which the respondent’s notice of appeal was served on it, namely 11th August 2023.
- 10. Having considered the applicant’s Motion, the affidavit in support, the ground on which it is anchored, the written and oral submissions of counsel, the cited authorities and the Rules, we find that its application succeeds. Accordingly, the respondent’s notice of appeal dated 25th July 2023 is hereby struck out with costs to the applicant.

DATED AND DELIVERED AT MOMBASA THIS 24TH DAY OF MAY, 2024.

A. K. MURGOR

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JUDGE OF APPEAL

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

G. V. ODUNGA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR

