



IN THE COURT OF APPEAL

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

17 July 2026

CASE No: AIFC-C/CA/2026/0028

State Institution "Health Department of Almaty Region"

Claimant

v.

International Academy of Medicine and Sciences LLP

Defendant

JUDGMENT AND ORDER

Justice of the Court:

Justice Tom Montagu-Smith KC

ORDER

1. **The Claimant's request for an extension of time to appeal is dismissed.**
2. **The Claimant's application for permission to appeal is dismissed.**

JUDGMENT

Introduction

1. This is an application for permission to appeal against two judgments and orders of Justice Lord Faulks dated 6 March 2026 and 12 May 2026 ("the First Judgment" and "the Second Judgment" respectively).
2. In the First Judgment, the Judge found the Defendant liable to pay the Claimant for the increased costs associated with the construction of a hospital. The Judge found that the initial price agreed of KZT 5.1bn was for works which formed the initial scope of the contract between the parties. That scope had subsequently been substantially changed at the request of the Claimant. The Judge found that this increased scope had been agreed, which amounted to a variation of the terms of the contract.
3. In the Second Judgment, the Judge assessed the amount to be paid at KZT 11,087,429,700, together with a penalty for late payment of KZT 305,863,362 and costs of KZT 35,371,899.
4. The Defendant advances a number of grounds in support of its proposed appeal. These are set out and addressed below. However, as a threshold point, the Claimant takes the position that the application for permission to appeal is out of time.

Time for appeal

5. As set out above, the Court's judgments were issued on 6 March 2026 and 12 May 2026.
6. Under AIFC Court Rules, r.29.10(2), any application for permission to appeal must be made within 21 days after the decision. Time to appeal against the First Judgment therefore expired on 27 March 2026. Time to appeal against the Second Judgment expired on 2 June 2026.
7. Despite this, the Defendant's application for permission to appeal was not issued until 9 June 2026.
8. The Defendant had originally submitted appeal documents on 2 June 2026 at 11:40pm, Astana time. These documents contained technical errors, including that Sections 3 and 4 of the form lacked an English translation. The documents were subsequently re-submitted at 5:59pm on 4 June 2026, after which they were sealed on 9 June 2026. For the purposes of the present application, I am prepared to treat the appeal as having been made on 2 June 2026.
9. On that basis, I am prepared to treat the proposed appeal against the Second Judgment as having been made within time. However, even on this basis, the proposed appeal against the First Judgment was 67 days out of time.
10. In its application for permission to appeal, the Defendant asserts that the appeal was filed within the time for appealing the Second Judgment. As to the First Judgment, the Defendant merely points out that the First and Second Judgments are "interconnected judicial acts". That is of course true.

However, the First and Second Judgments served distinct purposes and resolved distinct issues in dispute. The mere fact that they are “interconnected” does not stop time from running for the purposes of an appeal.

11. In the event that an extension of time is required, the Defendant requests one, referring to r.29.12. That Rule requires that any retrospective application for an extension be included in the appellant’s notice. Rule 29.12(2) further requires “a statement of the reason for the delay and the steps taken prior to the application being made”. Contrary to that requirement, no such statement is included. In the circumstances, it appears that no relevant steps were taken prior to the application and there are no good reasons for the delay.
12. The AIFC Court Rules permit the Court to extend any time limit, even retrospectively: r.2.14. However, it must be borne in mind that time limits within the AIFC Court Rules are important. They are set for a reason. Time limits related to the commencement of appeals are particularly important. The parties are entitled to know when a case or part of it has finally been decided. Time limits for appeals are also important for the administration of justice, for which finality is a real concern. This is reflected in the fact that it is not open to the parties to agree between themselves an extension of time to appeal: r.29.11.
13. The Court must also bear in mind that, when time to appeal expires, the proposed respondent has an accrued right – the benefit of a judgment which is no longer subject to challenge. Extending time deprives the respondent of that right. That is not determinative in every case. However, it is a powerful factor in the assessment.
14. In considering whether to extend time for appeal, the Court should of course consider all the circumstances of the case. Of great importance will be the reasons given for the delay. This is reflected in the Rules at r.29.12(2), which require a statement of those reasons. They are likely to be the single most important factor. The length of the delay is also likely to be important, together with any prejudice to the respondent and any additional burden on the Court which may have been caused by the delay. In general, lengthy delays are likely to require more compelling and cogent explanation.
15. In the present case, no explanation is offered at all.
16. For the First Judgment, the delay is nearly 10 weeks, a very substantial period indeed. In addition, the Court has subsequently gone on to determine the quantum in a subsequent stage. Had permission to appeal been sought on meritorious grounds in the interim, the Court could have decided whether to suspend the second stage in order to await the outcome of the appeal. In delaying the appeal, the Defendant has deprived the Court of the opportunity to case manage the claim in that way. In that context, I have in mind the Judge’s comments at paragraph 15 of the First Judgment, where he noted the frequent recourse of the parties to the Court. It appears that there have been a large number of claims and hearings arising from the contract at the heart of this dispute. In that context, the Defendant can expect the Court to be somewhat less indulgent of delays and consequent wasted court time.
17. In the circumstances, it is difficult to see how an extension of nearly 10 weeks can be justified. The Court has well in mind the need to deal with cases justly. However, doing so includes giving proper effect to time limits and the legitimate expectations of the parties. In my view, it is not sufficient to

obtain a near 10 week extension that a party simply asks for it, particularly where the Court has subsequently moved on to consider later stages in the litigation. To do so would be to ignore the time limits altogether.

18. In the circumstances, I refuse the Defendant's request for an extension of time to appeal against the First Judgment.
19. I go on to consider the grounds of appeal as if no extension of time is required to appeal against the Second Judgment. I note, however, that, in the main, the challenges advanced in the Defendant's grounds are directed at the reasoning in the First Judgment. To the extent that is the case, those challenges will fail.

The Grounds of Appeal

20. Subject to the timing points referred to above, permission to appeal may be granted where the proposed appeal has real prospects of success or where there is some other compelling reason why the appeal should be heard: AIFC Court Rules, r.29.6. It is not suggested that the second limb is satisfied. I therefore consider below whether the grounds advanced have real prospects of success.
21. Section II of the Appellant's Notice criticises the conclusion that the parties agreed to vary the scope and price of the works. This is an attack on the First Judgment. As a result of my refusal to extend time to appeal against that judgment, it has no real prospect of success.
22. In any event, even on its own terms, this ground appears to have no real prospect of success.
23. I note that the complaint is framed as a criticism of the adequacy of the reasons given for the Judge's decision. Where a Judge's reasons are considered to be inadequate, the appropriate approach is to write to the Court to seek supplementary reasons. In this case, in my view, the reasons were in any event adequate.
24. The Judge found (a) that it was possible as a matter of law for the parties to agree amendments to the contract and (b) that they did in fact do so, by their conduct. The focus of the argument at trial appears to have been on issue (a). As a result, the Judge's reasons in respect of issue (b) are in relatively short form. Despite this, the Judge having heard the evidence, clearly found as a fact that the parties reached agreement on the increased scope.
25. It is not said that the underlying facts are disputed: that the Defendant required a revised design and then approved the revised design which was provided; that the revised works were in fact carried out; that the works were accepted by the Defendant. In those circumstances, it is entirely unsurprising that the Judge found that the contract had been varied. As the Judge said, the work instructed changed, with the result that the price changed.
26. In Section III, the Defendant complains about the Court's treatment of the "negative expert opinion" by which the Claimant's initial designs were rejected.
27. These are again attacks on the First Judgment as they go to the question of whether the contract was varied. As such, they have no real prospect of success.

28. In any event, at least as currently drafted, they do not appear to have merit, even on their own terms. The complaint appears to be that the initial drafts were (or may have been) rejected as a result of design defects for which the Claimant was responsible. However, the Defendant does not explain that allegation in any detail. Nor does it appear to have been advanced at trial. It is not open to a party to raise a new factual case on appeal.
29. Section IV asserts that the Court failed to take into account that various elements of works “were developed as separate projects”. The Defendant then complains that the Court did not determine how and when these works were incorporated into the project such that the Defendant took responsibility for their costs.
30. The finding in the First Judgment that “all the work was accepted and there was never any objection to the amended scheme.” (First Judgment, paragraph 58) is not obviously challenged and could not now be challenged. It does appear that the Defendant sought to challenge quantum at the second stage on the basis that “*the increased costs include sums outside the scope of those attributable to the amended DED*” (Second Judgment, paragraph 4). However, the Judge’s view that this sort of point could and should have been raised at trial, but was not raised, is not addressed by the Defendant.
31. Ultimately, the Defendant took an all or nothing approach at trial, arguing that the contract could not be varied, as a matter of law. That was rejected in the First Judgment. Time to appeal that judgment has expired. Any attempt to advance new points at the second stage were too late.
32. Section V asserts that the additional costs above KZT 5.1bn were not approved by the Defendant. Section VI asserts that any changes to the Contract required compliance with specific procedural requirements (as to approval by particular bodies; and as to the use of writing).
33. These grounds face similar obstacles to the others. Section V would require either an appeal against the findings of the First Judgment or the introduction of new factual issues which were not argued at trial. Section VI would require both: it would amount to a challenge to the finding in the First Judgment that the contract was varied; it would require the introduction of new allegations on appeal which would require further factual investigation. None of that is permissible.
34. Section VI also introduces a collection of other discrete points.
35. First, the Defendant disputes the award of a penalty. This is advanced on the basis of a new factual argument that payment was suspended because the Defendant was denied access to verify performance. In my view, there is no real prospect of the Defendant being permitted to run a new factual case on appeal.
36. Second, the Defendant disputes the award of legal costs. The Defendant says that costs were not properly substantiated and the Judge did not assess their reasonableness.
37. The Second Judgment refers (paragraph 14) to a breakdown of the costs claimed. I have not been shown that. A claim for costs is normally substantiated in a schedule. A schedule was provided.
38. As to the second point, the Judge plainly did consider the costs claimed to be reasonable – a judge is not required to give detailed reasons for that sort of case management decision. Costs are within the

discretion of the first instance judge and I have seen nothing to suggest an error of principle. I would add that the sum awarded (KZT 35,371,899) appears eminently reasonable.

39. The Defendant challenges the award of VAT on the basis that the risk of amendments to taxes was to be borne by the Claimant. The Judge awarded the payment of VAT applicable as at the date of payment. However, the Defendant's obligation was to pay sums as they fell due. If, as a result of the Defendant's failure to do so, the Claimant suffered additional loss resulting from some change in the VAT burden, the Defendant would be obliged to compensate the Claimant for that loss. In one way or another, then, the Defendant's obligation would be to pay VAT at the rate applicable at the date of payment. In any event, it is not even alleged that the VAT rate has changed so as to justify an appeal on this basis.
40. Finally, Section VII asserts that the Judge failed to take into account the fact that the Defendant has already made certain payments.
41. That is wrong. In the Second Judgment, at paragraph 7, the Judge made clear that any sums already paid should be deducted from the judgment sum. The Judge was not in a position to make the actual deduction because he had not been provided with information about what had been paid. The deduction is not therefore recorded in the Order. However, paragraph 7 of the Judgment is perfectly clear. The Defendant should simply pay the balance, setting off what has already been paid. If the Claimant takes the position that more falls to be paid, that will need to be addressed at the enforcement stage, in the usual way.
42. In the circumstances, I find that none of the grounds of appeal advanced have any real prospect of success.

By Order of the Court,

Justice Tom Montagu-Smith KC
Justice, AIFC Court

Representation:

The Claimant was represented by Ms Galiya Turlybekova, General Department Specialist, State Institution "Health Department of Almaty Region", Almaty region, Republic of Kazakhstan.

The Defendant was represented by Mr Sergei Vatayev, Advocate, Ms Elena Dvoretzkaya-Yussupova, Advocate, and Mr Ilya Kirichenko, Advocate, Legit Advocates' Bureau, Almaty, Republic of Kazakhstan.