IN THE COURT OF APPEAL

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

19 November 2026

CASE No: AIFC-C/CA/2026/0064

Appellant

Appellant

v

Respondent

Respondent

JUDGMENT AND ORDER

Justice of the Court:

Justice The Rt. Hon. Sir Julian Flaux

ORDER

1. The Appellant's application to appeal against the Order and judgment of Justice Tom Montagu-Smith KC ("the judge") dated 7 October 2026 is dismissed.

JUDGMENT

1. Ground 1 of the Appellant's Notice contends that the judge erred in concluding that the Appellant's application to challenge the arbitrator's Decision on Competence should have been brought under Article 26(3) of the AIFC Arbitration Regulations 2017 ("the Regulations") and not Article 44 of the Regulations. This criticism is misconceived. Article 26(3) provides:

> "The arbitral tribunal may rule on a plea referred to in paragraph (2) of this Article [a plea that the arbitral tribunal does not have jurisdiction] either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, subject to any process agreed between the parties, within thirty days after having received notice of that ruling, the AIFC Court of First Instance to decide the matter, which decision shall not be subject to appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award."

2. Article 44 provides:

> "(1) Recourse to a court against an arbitral award made in the seat of the AIFC may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this Article.
> (2) Such application may only be made to the AIFC Court. An arbitral award may be set aside by the AIFC Court only if: …
> (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award, or such longer period as the parties to the arbitration have agreed in writing, or, if a request had been made under Article 43, from the date on which that request had been disposed of by the arbitral tribunal."

3. The Appellant submits that the arbitrator's Decision on Competence was not a ruling on a "preliminary question" within the meaning of Article 26(3) of the Regulations but a ruling that finally determined the question of jurisdiction. Like the judge, I would reject that submission. The judge correctly analysed the distinction drawn in Article 26(3) at [30] of his judgment: "The distinction drawn in Article 26(3) is between rulings on jurisdiction "as a preliminary question" and rulings on jurisdiction "in an award on the merits". The word "preliminary" is therefore a reference to the stage of the proceedings at which jurisdiction is decided. It does not refer to rulings on jurisdiction which are only provisional."

4. The Appellant next submits that Articles 26(3) and 44 are not mutually exclusive. However, as the judge rightly said at [28] of his judgment, the logical consequence of that argument is that the shorter time limit of 30 days in Article 26(3) would never apply. That cannot have been the intention of the Regulations.

5. The Appellant seeks to draw support from the fact that the judge concluded at [31] of his judgment that it was not fatal to the Appellant's application that it referred to the wrong provision, because that caused no practical prejudice as everyone understood the basis on which the challenge was brought. However, as the judge went on to say, what did matter was that Article 26(3) had a time limit of 30 days for an application, which the Appellant exceeded by nearly two months. In my judgment, that was fatal to the Appellant's application and under the Article there is no right of appeal to the Court of Appeal.

6. The Appellant then seeks to argue that because the judge went on to examine the substantive grounds on the merits, that was an exercise of jurisdiction under Article 44 which is capable of appeal to the Court of Appeal. This argument misunderstands that the section of the judgment dealing with the substantive grounds from [40] onwards was clearly *obiter*. Even if the Appellant had an arguable case on the merits, it faced the insuperable obstacle that its application was out of time.

7. Ground 2 of the Appellant's Notice contends that there is an internal inconsistency in the judge's reasoning in [31] of the judgment in that he concluded that reference to Article 44 rather than Article 26(3) was immaterial but went on to conclude that it was material that the correct provision was Article 26(3) with its 30-day time limit. The Appellant argues that a procedural time limit goes to the admissibility of the application not to the Court's jurisdiction to determine a well-founded objection that the arbitral tribunal lacks competence.

8. The Appellant contends that this approach accords with the reasoning of the English Commercial Court in *Sierra Leone v SL Mining Limited* [2021] EWHC 286 (Comm) which the judge approved at [86] of his judgment. However, that case was concerned (as the judge said in [86] of his judgment in the present case) with a challenge to jurisdiction on the basis that the arbitration was premature which Sir Michael Burton held was a matter of admissibility, not jurisdiction, and so an issue for the tribunal. The context in which the judge agreed with Sir Michael Burton's analysis was in accepting the Respondents' submission that a failure to comply with mandatory pre-arbitration dispute resolution steps was a matter of admissibility, not jurisdiction, and so an issue for the tribunal not the Court. The judge was not considering the time limit under Article 26(3) for an application to the Court to challenge an arbitrator's ruling that the arbitral tribunal has no jurisdiction, which by definition is a matter for the Court not the arbitrator. Nothing in *Sierra Leone* or the judge's acceptance of its reasoning supports the Appellant's contention that the 30-day time limit goes to admissibility not jurisdiction. It is clear from the wording of article 26(3) that if the application to challenge the arbitrator's ruling on jurisdiction is not brought within 30 days of that ruling, the Court has no jurisdiction to entertain an application under that Article.

9. Ground 3 of the Appellant's Notice contends that there is some other compelling reason for the appeal to be heard because it raises issues of general importance about the AIFC arbitration system concerning the relationship between Articles 26(3) and 44. There is nothing in this point. The meaning of Article 26(3) is clear and the judge's judgment is clear and correct. Nothing in it requires clarification in the Court of Appeal.

10. Ground 4 of the Appellant's Notice contends that the judge's conclusions on the substantive grounds on the merits were wrong and that the arbitral tribunal lacked jurisdiction. It is not necessary to address this Ground in detail because, if for the reasons I have set out above, the first three Grounds fail, then this Ground is academic. As I have said, even if there were any force in its points on the

merits, the Appellant cannot overcome the insuperable obstacle that its application to challenge the arbitrator's ruling is out of time and it has no right to appeal to the Court of Appeal.

11. For all these reasons, the proposed appeal has no real prospect of success and the application for permission to appeal is refused.

By the Court,

The Rt. Hon. Sir Julian Flaux
Justice, AIFC Court

Representation:

The Appellant was represented by Mr Aidar Kashkarbayev, Ms Dinara Cherniyazova, Ms Kamar-Sulu Yermekbayeva, lawyers, Almaty, Kazakhstan.

The Respondent was represented by Mr Bakhyt Tukulov, Partner, Ms Mariya Petrenko, Senior Associate, TKS Disputes LLP, Almaty, Kazakhstan.