



**Wanyonyi v Seneca East Africa Limited (Appeal E178 of 2023)  
[2024] KEELRC 1104 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1104 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E178 OF 2023  
NJ ABUODHA, J  
MAY 9, 2024**

**BETWEEN**

**MARTIN WAMALWA WANYONYI ..... APPLICANT**

**AND**

**SENECA EAST AFRICA LIMITED ..... RESPONDENT**

**RULING**

1. Through an application filed on 10<sup>th</sup> September, 2023 the applicant sort orders on the main that this Court grants the applicant leave to appeal out of time and further that the Court grants stay of execution on the order of costs.
2. The application was brought on grounds that the ruling intended to be appealed from was delivered by the trial court without notice to the parties. More particularly that the ruling on the preliminary objection dated 20<sup>th</sup> February, 2023 was delivered in favour of the respondent on 28<sup>th</sup> July, 2023 without prior notice to the parties. Further that the applicant only learnt of the ruling on 31<sup>st</sup> August, 2023 after which the applicant wrote to the Chief Executive Officer to acquire a certified copy of the ruling and proceedings.
3. The applicant further stated that the delay in lodging the appeal was occasioned by the fact that the court file was not in the Court premises for over 30 days from the date of the delivery of the ruling as the learned Magistrate was on transfer to another station.
4. From the record, the trial court's ruling intended to be appealed from was delivered on 28<sup>th</sup> July, 2023. The application herein was filed on 18<sup>th</sup> September, 2023. One of the principal considerations in an application for extension of time is diligence on the part of the applicant. That is to say, was the application brought inordinately late? The other major consideration is the cause for the delay.



5. The Court has reviewed and considered the application herein in the light of the above and is persuaded that the application has not been brought inordinately late and the reasons for the delay are excusable. The applicant has further stated that the typed ruling and proceedings are ready.
6. The application is therefore allowed on terms that the applicant shall file and serve the record of appeal within 30 days from the date of this ruling. Meanwhile there will be stay of execution on the issue of costs in the lower court pending the outcome of the appeal herein.
7. **Costs shall abide the outcome of the appeal.**
8. It is so ordered

Dated this 9<sup>th</sup> day of May, 2024

Delivered this 9<sup>th</sup> day of May, 2024

**ABUODHA NELSON JORUM**

**JUDGE**

RULING Appeal E178 of 2023

