



Chairman Masaba Farmers Co-operative Union Ltd & 2 others v Nyaoko (Miscellaneous Application E015 of 2025) [2026] KEELRC 215 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEELRC 215 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E015 OF 2025**

**NZIOKI WA MAKAU, J
JANUARY 29, 2026**

BETWEEN

**THE CHAIRMAN MASABA FARMERS CO-OPERATIVE UNION LTD 1ST APPLICANT
THE CHIEF EXECUTIVE OFFICER, MASABA FARMERS CO-OPERATIVE 2ND APPLICANT
MASABA CO-OPERATIVE UNION LTD 3RD APPLICANT**

AND

PETER OMBABA NYAOKO RESPONDENT

RULING

1. The Applicants moved this Court by way of a Notice of Motion dated 26th November 2025 seeking, inter alia, leave to lodge an appeal out of time against the judgment delivered on 27th August 2025 by Hon. J. Nyariki (SRM) in Kisii MCELRC No. E002 of 2022. They further sought an order that, upon grant of such leave, the draft memorandum of appeal annexed to the application be deemed as duly filed and served, as well as an order for stay of execution of the said judgment pending the hearing and determination of the intended appeal. They also prayed that the costs of the application abide the outcome of the appeal. The application is premised on the grounds set out on its face and supported by the affidavit of Mr. Kennedy Mokua Ongiri sworn on 26th November 2025. In summary, the Applicants contend that although the matter proceeded to hearing and submissions were duly filed, judgment was delivered without notice to either the parties or their advocates. They aver that they only became aware that judgment had been delivered on 27th August 2025 after their advocate checked the court's case tracking system in November 2025, by which time the statutory period for lodging an appeal had already lapsed.



2. The Applicants further assert that the intended appeal is arguable and raises serious questions of law with high chances of success. They fault the Trial Court for granting reliefs that were neither pleaded nor sought by the Respondent, including findings that the Respondent's retirement was discriminatory and constituted an unfair labour practice, the award of general damages, and orders relating to statutory deductions and remittances. They also challenge the computation and legal basis of the monetary award and contend that the Trial Court improperly extended the Respondent's retirement age.
3. The Applicants contend that the delay in filing the appeal was neither deliberate nor inordinate, but was solely occasioned by the absence of notice of the judgment date. They maintain that the present application was filed promptly upon discovery of the judgment and that, unless stay of execution is granted, execution is imminent and the intended appeal will be rendered nugatory. They therefore urge the Court, in the interests of justice, to allow the application as prayed.
4. In opposition to the Notice of Motion the Respondent filed a replying affidavit sworn by himself on 9th December 2025. While acknowledging that judgment was delivered on 27th August 2025, he disputed the Applicants' assertion that the judgment was delivered without notice. He maintained that it was incumbent upon the Applicants to diligently follow up their case and that their late discovery of the judgment was a manifestation of indolence, which could not constitute sufficient cause for enlargement of time. The Respondent further contended that no evidence had been tendered to demonstrate any failure by the Court to issue notice or any effort by the Applicants to ascertain the status of the matter, particularly given that the record clearly indicated the judgment date. He argued that mere dissatisfaction with the contents of the judgment did not justify extension of time and that the right of appeal must be exercised strictly within the statutory timelines.
5. According to the Respondent, the application was an afterthought intended to mask the Applicants' failure to act in time and amounted to an abuse of the court process. He emphasised that litigation must come to an end and that he was entitled to enjoy the fruits of his judgment. He further asserted that execution was a lawful consequence of the judgment and that the Applicants had failed to demonstrate any substantial loss to warrant the grant of stay. In conclusion, the Respondent urged the Court to dismiss the application with costs. In the alternative, he prayed that should the Court be inclined to grant any of the orders sought, the Applicants be directed to deposit the entire decretal sum in court as security for due performance of the decree.
6. In rejoinder, the Applicants filed a supplementary affidavit sworn by Mr. Kennedy Mokuia Ongiri on 15th December 2025. They reiterated that the judgment delivered on 27th August 2025 was rendered in the absence of the parties and their advocates and that no notice of the judgment date was ever issued or served. They contended that, in the absence of such notice, neither they nor their advocates could reasonably have known when the judgment was scheduled for delivery, and that the failure by the Court to notify the parties should not be visited upon them as innocent litigants. The Applicants further averred that the intended appeal raises plausible and weighty issues of law and that the Trial Magistrate's judgment was flawed in several respects, thereby warranting interrogation by the appellate court.
7. The application was canvassed by way of written submissions. Although directions on the filing of submissions were issued on 10th December 2025, only the Applicants filed their submissions.

Applicants Submissions

8. In their written submissions, the Applicants set out the background of the dispute before the Magistrate's Court, noting that the Respondent had instituted Kisii MCELRC No. E002 of 2022



seeking, among other reliefs, declarations of unfair and discriminatory labour practices, payment of alleged withheld salary and deductions, leave pay, remittance of statutory deductions, damages, costs, and interest. They submitted that the suit proceeded to full hearing, with both parties testifying and thereafter filing written submissions, after which the matter was fixed for mention on 20th August 2025.

9. The Applicants submitted that following the mention date, no notice or communication was issued by the Trial Court regarding the date of delivery of judgment. They maintained that they and their advocate were awaiting notification from the Court and only discovered in November 2025, upon checking the court portal, that judgment had been delivered on 27th August 2025 in their absence. By that time, the statutory period for lodging an appeal had lapsed, thereby necessitating the filing of the present application.
10. On the merits, the Applicants submitted that they are aggrieved by the judgment and that the intended appeal raises arguable and weighty issues of law. They faulted the Trial Magistrate for finding that the Respondent's retirement was unfair, discriminatory, and amounted to an unlawful labour practice despite the Respondent having attained retirement age; ordering remittance of statutory deductions when the Respondent was no longer an employee; awarding sums allegedly unsupported by evidence; granting leave pay for the entire period of employment notwithstanding evidence that leave had been taken; and awarding damages of Kshs. 100,000/- without any evidentiary basis. They contended that the judgment was irregular, illegal, and slanted in several respects. The Applicants further submitted that the delay in filing the appeal was neither deliberate nor inordinate, but was adequately explained by the absence of notice of the judgment date. They asserted that this constituted sufficient cause for enlargement of time and that the omission by the trial court to notify the parties should not be visited upon them.
11. In support of their application, the Applicants relied on the cases of *Singh v Awa* (Employment and Labour Relations Appeal E041 of 2024) [2025] KEELRC 26 (KLR), *Muchemi v Roy Transmotors Limited* (Employment and Labour Relations Appeal E147 of 2024) [2025] KEELRC 650 (KLR) and *Juma v Pinkertons' Kenya Limited* (Appeal E164 of 2023) [2025] KEELRC 2161 (KLR), in which the Court exercised its discretion to extend time for filing appeals upon demonstration of sufficient cause. They urged the Court to similarly exercise its discretion in their favour. In conclusion, the Applicants prayed that the application be allowed as prayed.

Disposition

12. The Court has reviewed the court record and has not discerned a notice to parties in respect of the Judgment delivery. Whereas there is a note indicating the date for delivery of judgment, there is no indication this was brought to the attention of either party. The inevitable conclusion from this analysis is that the failure by the Respondent in the case to prefer an appeal on time was a direct consequence of not being notified of the delivery of the Judgment. In that regard the Court exercises its discretion and grants the Applicant leave to file an appeal out of time. The Record of Appeal be filed within 60 days of today. Costs will abide the outcome in the intended appeal.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 29TH DAY OF JANUARY 2026

NZIOKI WA MAKAU, MCIARB.

JUDGE

