



REPUBLIC OF KENYA



**Ngaira & 126 others v Sendwave Limited (ZEPZ) (Civil Appeal (Application)
E365 of 2024) [2025] KECA 968 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KECA 968 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E365 OF 2024**

SG KAIRU, JA

MAY 23, 2025

BETWEEN

ABRAHAM LEON NGAIRA 1ST APPLICANT
IRENE DIMMO 2ND APPLICANT
BELINDA OLISA MASHETI 3RD APPLICANT
DORAH KICHUNJU 4TH APPLICANT
BETHA MUSAZI 5TH APPLICANT
REBECA KARANJA 6TH APPLICANT
DAISY ACHIENG MBOYA 7TH APPLICANT
ANNE OLUOCH 8TH APPLICANT
CAROLINE MORAA MAUTI GEORGE 9TH APPLICANT
IRENE ZALE 10TH APPLICANT
BETTY WAIRIMU MAINA 11TH APPLICANT
TRIZER TAAKA 12TH APPLICANT
MAUREEN OBURE 13TH APPLICANT
FRIDAH MUGAMBI 14TH APPLICANT
FIONA MUTHONI 15TH APPLICANT
GERALD WERE DIFFU 16TH APPLICANT
STEPHEN OCHIENG ODHIAMBO 17TH APPLICANT
DEBORAH MUTHEU MUTUNGA 18TH APPLICANT
ESTHER GITHAE 19TH APPLICANT



RACHEAL OLUOCH	20 TH APPLICANT
BIANCA NYAMBURA	21 ST APPLICANT
PHENEY MWIMWA	22 ND APPLICANT
MICHELLE OWILI	23 RD APPLICANT
STELLAH WANJOHI	24 TH APPLICANT
DONELLA LANGAT	25 TH APPLICANT
JOYCE WAMBUI NJUBI	26 TH APPLICANT
DAVID CHWEYA	27 TH APPLICANT
MOREEN CHILO	28 TH APPLICANT
BRENDA ANYANGO MIDAMBA	29 TH APPLICANT
PURITY NGETICH	30 TH APPLICANT
JOSEPHINE OMONDI	31 ST APPLICANT
IAN MWANGI DUNCAN	32 ND APPLICANT
FAITH CHELANGAT	33 RD APPLICANT
ESTHER GATHONI MAINA	34 TH APPLICANT
BANCY NYAKIO NJIRU	35 TH APPLICANT
YVONNE OCHIENG	36 TH APPLICANT
EVA MAKENA MUTEA	37 TH APPLICANT
JOYCE MUSAU	38 TH APPLICANT
SELESTINE AKELO	39 TH APPLICANT
JOSEPHINE FLORA ATIENO OKENO	40 TH APPLICANT
LUCY WAMBUI	41 ST APPLICANT
FELICITY NDUATA KAMWANGA	42 ND APPLICANT
WINNIE WANJIKU WACHIRA	43 RD APPLICANT
JANNAT JUMA	44 TH APPLICANT
JOSECK MOMANYI	45 TH APPLICANT
CAREN SHANICE GUMBA	46 TH APPLICANT
RHODA MUKOLWE	47 TH APPLICANT
STEPHEN KARIUKI	48 TH APPLICANT
COREEN NAMWANZO GONZO	49 TH APPLICANT
GERALDINE KOKI	50 TH APPLICANT
GRACE WARIARA MUHOYA	51 ST APPLICANT



KEBASO MARAGIA	52 ND APPLICANT
IRENE EKIRAPA	53 RD APPLICANT
KELVIN MUTHOKA	54 TH APPLICANT
ISHMAEL MWAI	55 TH APPLICANT
FRANCIS MBITHI	56 TH APPLICANT
IRENE AWUOR OTULA	57 TH APPLICANT
SHARON ALUVISA	58 TH APPLICANT
CAROLINE WAMBUI NJOROGE	59 TH APPLICANT
JOYCE MBUGUA	60 TH APPLICANT
DAVID KURIA MWANGI	61 ST APPLICANT
FLAVIANE MUTURI	62 ND APPLICANT
JEMIMAH MUROKI	63 RD APPLICANT
JOHNSTONE MUTHEE	64 TH APPLICANT
JAMES OBINGO	65 TH APPLICANT
CAROLINE NYOKABI KARIUKI	66 TH APPLICANT
MERCY ALUSA	67 TH APPLICANT
JANEFFA MAREMBA MWAKALE	68 TH APPLICANT
DAMARIS OLUOCH	69 TH APPLICANT
HELLEN MALAGO	70 TH APPLICANT
EVERLYNE AKOTH OTIENO	71 ST APPLICANT
SAIDA YUSUF	72 ND APPLICANT
LUCY MOBAGI	73 RD APPLICANT
LEONIDA NGETICH	74 TH APPLICANT
JOSEPH GICHUHI	75 TH APPLICANT
SALLY KOROSS	76 TH APPLICANT
NASEEM MUKANDA	77 TH APPLICANT
PERIS LUTA	78 TH APPLICANT
GLADYS CHEROTICH RONO	79 TH APPLICANT
DIANA IRERI	80 TH APPLICANT
BILHA MUTHONI MBAIRE	81 ST APPLICANT
ANDRE ETABALE WETINDI	82 ND APPLICANT
MOSES KIBET	83 RD APPLICANT



ELIZABETH ODHIAMBO	84 TH APPLICANT
JERRY OTIENO	85 TH APPLICANT
ANN MUTHENGI	86 TH APPLICANT
DIANA KERUBO ORWARU	87 TH APPLICANT
MERCY OLOO	88 TH APPLICANT
RUTH MITA	89 TH APPLICANT
JACKLYNE MUTHEE	90 TH APPLICANT
MARK KHAEMBA	91 ST APPLICANT
SAMANTHA KIMANI	92 ND APPLICANT
SHARON ONONO	93 RD APPLICANT
SIMON KIMANI CHEGE	94 TH APPLICANT
NICHOLAS MUTHONI	95 TH APPLICANT
STELLAH WAMAITHA	96 TH APPLICANT
IRENE MUIYURO	97 TH APPLICANT
LYDIA DANDA	98 TH APPLICANT
LUCY KALUNGU	99 TH APPLICANT
GRACE MUIRURI	100 TH APPLICANT
MERCY CHEGE WAMBUI	101 ST APPLICANT
RALPH MSHENGA	102 ND APPLICANT
VERONICA OKOTH	103 RD APPLICANT
CATHERINE KARANJA	104 TH APPLICANT
MARY-EDNA ACHIENG OBALLA	105 TH APPLICANT
ANNASTACIA NDUNGE NZUKI	106 TH APPLICANT
FAITH NGALA	107 TH APPLICANT
YVONNE KIRAGU	108 TH APPLICANT
ELIZABETH SAXTON	109 TH APPLICANT
LILIAN OTIENO	110 TH APPLICANT
CHRISTINE NYIBORI ARUKA	111 TH APPLICANT
ROSEMARY CHEGE	112 TH APPLICANT
SHEILA SAIDIMU	113 TH APPLICANT
ANTONY BUYEKA	114 TH APPLICANT
GRACE OMARI	115 TH APPLICANT



MIRIAM NYAMBURA MURIITHI	116 TH APPLICANT
RITA ODUNDO	117 TH APPLICANT
GRACE WANJIKU KAGWE	118 TH APPLICANT
NZAKWA VENESSA	119 TH APPLICANT
CALVINCE ONYANGO	120 TH APPLICANT
MILLICENT KILONZO	121 ST APPLICANT
JOSEPH MUTUI	122 ND APPLICANT
DERRICK MUNENE	123 RD APPLICANT
SYLVIA WANJIKU WAWERU.	124 TH APPLICANT
HILLARY ROTICH	125 TH APPLICANT
WINNIE NJERI NJOROGE	126 TH APPLICANT
KEVIN WACHIRA	127 TH APPLICANT

AND

SENDWAVE LIMITED (ZEPZ) RESPONDENT

(Being an application for extension of time to file the Record of Appeal against the Judgment of the Employment and Labour Relations Court of Kenya at Nairobi (Linet Ndolo, J.) dated 14th March 2024 in ELRC Cause No. E532 of 2023)

RULING

1. In a judgment delivered on 14th March 2024 the Employment and Labour Relations Court (ELRC) (L. Ndolo, J.) allowed the applicants’ claim for unlawful and unfair termination of employment by way of redundancy and awarded each of them the equivalent of one month’s salary in lieu of notice. Their prayers for other reliefs including claims for house allowance for 7 months; 3 months’ pay in lieu of notice; 12 months’ salary compensation for unfair redundancy; severance pay; and bonuses were declined. Dissatisfied with part of the judgment and intending to appeal to this Court, the applicants through their present advocates, namely MAW Advocates LLP filed a Notice of Appeal dated 19th March 2024.
2. In their application dated 11th June 2024 prosecuted before me on 25th March 2025 by learned counsel for the applicants Mr. Wangila Waliaula, the applicants seek leave to appeal against the said judgment out of time. They assert in the affidavit sworn by Abraham Leon Ngaira on behalf of the applicants that having filed the Notice of Appeal dated 19th March 2024, they were unable to file the Memorandum and Record of Appeal within the stipulated period on account of “a disagreement” among them on the issue of representation in the appeal; that after the period of lodging the appeal had lapsed, the applicants instructed their advocates to file the present application; that they have since obtained a certified copy of the judgment and have prepared a complete record of appeal and are ready to file it without further delay.



3. Mr. Waliaula in his written and oral submissions submitted that in those circumstances, this is a proper case for the Court to exercise its discretion in favour of the applicants and extend time. In support, counsel cited decision of the Supreme Court in Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others [2014] eKLR and of this Court in Leo Sila Mutiso vs. Hellen Wangari Mwangi [1999] 2 EA 231 urging that the delay involved is not inordinate and has been satisfactorily explained; that no prejudice will be occasioned to the respondent and that the intended appeal raises serious triable issues.
4. Opposing the application, learned counsel Mr. Billy Wesonga relying on a replying affidavit sworn by Steve Carpenter, head of the respondent as well as his written submissions which he orally highlighted urged that the delay involved is not excusable; that the explanation offered is disingenuous as the applicants did file a notice of appeal dated 19th March 2024 though they did not serve it; that the respondent, which has already satisfied the award of the ELRC will be prejudiced having deemed the litigation as concluded as it was not served with the notice of appeal.
5. Citing decisions in Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others and Leo Sila Mutiso vs. Hellen Wangari Mwangi as well as Paul Wanjohi Mathenge vs. Duncan Gichane Mathenge [2013] eKLR and Janet Nyandiko vs. Kenya Commercial Bank Limited [2014] KECA 293 (KLR) on the applicable principles, counsel urged that there was no plausible explanation for the delay and the application lacks merit.
6. In Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others the Supreme Court of Kenya pronounced that extension of time is not a right of a party but an equitable remedy available to a deserving party at the discretion of the court; that the party seeking extension of time has the burden to lay a basis to the satisfaction of the court; that extension of time is a consideration on a case to case basis; and that delay should be explained to the satisfaction of the court. Other considerations include whether there will be prejudice suffered by the respondents if the extension is granted; and whether the application is brought without undue delay. Public interest is also a relevant consideration.
7. The explanation offered by the applicants for the conceded delay involved is that having filed the Notice of Appeal dated 19th March 2024, they were unable to file the Memorandum and Record of Appeal within the stipulated period on account of “a disagreement” among them on the issue of representation in the appeal. It is however apparent that the Notice of Appeal was filed by the firm MAW Advocates LLP. There is no suggestion that that firm did not have instructions from the applicants to do so. It must be deemed to have had instructions to file the appeal. It is the same firm of advocates that filed the present application on behalf of the applicants. The assertion that a disagreement on representation impeded timely filing of the appeal is therefore not convincing. I am therefore inclined to agree with counsel for the respondent that the delay has not been satisfactorily explained.
8. Counsel also informed the Court during the hearing of the application that the respondent, not having been served with a notice of appeal, adjusted its position and satisfied the judgment amount on the belief that litigation on the matter was at an end. There is merit therefore in the argument that the respondent would suffer prejudice in having the matter re-opened.
9. All in all, I am not persuaded that the applicants have laid a proper basis for the Court to exercise its discretion in their favour. The applicants’ application dated 11th June 2024 fails and is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MAY, 2025.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

