



**Kenyatta University v Thomas & 25 others (Civil Application E494 of 2022) [2024] KECA 843 (KLR) (12 July 2024) (Ruling)**

Neutral citation: [2024] KECA 843 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E494 OF 2022  
S OLE KANTAI, JM MATIVO & GWN MACHARIA, JJA  
JULY 12, 2024**

**BETWEEN**

**KENYATTA UNIVERSITY ..... APPLICANT**

**AND**

- HUMPREY NYAGA THOMAS ..... 1<sup>ST</sup> RESPONDENT**
- CHARLES KARIGI MUIRURI ..... 2<sup>ND</sup> RESPONDENT**
- JACKSON MAKOKHA ..... 3<sup>RD</sup> RESPONDENT**
- MICHAEL NDUNGU ..... 4<sup>TH</sup> RESPONDENT**
- JOSEPH MUTURI MWANGI ..... 5<sup>TH</sup> RESPONDENT**
- LAWRENCE FN GATHENYA ..... 6<sup>TH</sup> RESPONDENT**
- MARGARET WANJIRU ..... 7<sup>TH</sup> RESPONDENT**
- JACOB THUMI ..... 8<sup>TH</sup> RESPONDENT**
- WAKARINDI GATHARIKI ..... 9<sup>TH</sup> RESPONDENT**
- GEORGE NDUNG’U ..... 10<sup>TH</sup> RESPONDENT**
- MICHAEL KAARA ..... 11<sup>TH</sup> RESPONDENT**
- MARGARET NGUNJI ..... 12<sup>TH</sup> RESPONDENT**
- FRANCIS LIBECHI ..... 13<sup>TH</sup> RESPONDENT**
- S.INDIMULI A. GEOFFREY ..... 14<sup>TH</sup> RESPONDENT**
- STEPHEN M NUMI ..... 15<sup>TH</sup> RESPONDENT**
- PETER IRUNGU ..... 16<sup>TH</sup> RESPONDENT**
- RICHARD IBURU ..... 17<sup>TH</sup> RESPONDENT**



AMOS MATHENGE .....	18 <sup>TH</sup> RESPONDENT
ESTHER NJOKI MBURU .....	19 <sup>TH</sup> RESPONDENT
JAMES KARANJA MUTURI .....	20 <sup>TH</sup> RESPONDENT
PETER OCHEMBE .....	21 <sup>ST</sup> RESPONDENT
VINCENT NGUNGI CHEGE .....	22 <sup>ND</sup> RESPONDENT
SAMUEL W. NGUNGI .....	23 <sup>RD</sup> RESPONDENT
SIMON M. KIGOTHO .....	24 <sup>TH</sup> RESPONDENT
KARIH WAMBUGU .....	25 <sup>TH</sup> RESPONDENT
AGNES KABURA NDUNG’U .....	26 <sup>TH</sup> RESPONDENT

*(Being appeal from the Judgment and Decree of the Employment and Labour Relations Court of Kenya at Nairobi (Mbaru, J.) made on 10th December, 2021 in Milimani ELRC Constitution Petition Number 93 of 2018)*

## RULING

1. The motion before us is unusual because what we are asked to do is something which is usually dealt with administratively and does not get to a full bench of the court.
2. The 26-applicants led by Francis Libechi (13<sup>th</sup> applicant) who has sworn an affidavit to support the motion were successful in a suit they had filed against their employer, Kenyatta University (the appellant). They were each awarded Kshs.280,380 and the appellant was ordered to reinstate them to employment. The appellant appealed and that appeal is at our registry awaiting hearing and determination. They have now approached us by motion on notice said to be brought under Section 3A of the *Appellate Jurisdiction Act*, Article 159 of *the Constitution* of Kenya, 2010 and all other enabling provisions of law asking in the main that the said appeal be fast tracked for hearing. In grounds in support of the motion and in the said affidavit they say among other things that they were successful in their suit but that the appellant appealed the judgment on 22<sup>nd</sup> July, 2022 but that appeal is yet to be allocated a hearing date; that the appeal should be heard on the basis of priority.
3. Why this should be done, it is deposed in the affidavit, is because the applicants who are of advanced years are suffering from multiple health complications which are impacting their continued active participation in the court process; that the applicants have no source of income due to the loss of their jobs and they are unable to find other jobs, their lawyers wrote a letter to court asking for an urgent hearing date for their appeal but there was no response.
4. There are various medical records attached to the application to support what they are saying in the affidavit. When the application came up for hearing before us on 29<sup>th</sup> April, 2024 learned counsel Mr. Thuita appeared for the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 20<sup>th</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 25<sup>th</sup> and 26<sup>th</sup> applicants while learned counsel Miss Guserwa appeared for the 1<sup>st</sup>, 2<sup>nd</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 15<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 21<sup>st</sup> and 24<sup>th</sup> applicants. Learned counsel Mr. Thuo appeared for the respondent (appellant).
5. Mr. Thuita submitted that letters to court praying for an urgent hearing date had not been responded to; a hearing date should be allocated on priority, a position that was supported by Miss Guserwa. Mr.



Thuo for the appellant had not filed any document and as would be expected, had no objection to the application.

6. We have considered the motion and submissions made.
7. A record of appeal was filed challenging judgment of the High Court and is awaiting hearing but no hearing date has been allocated. We are told that the applicants are of advanced age and it has been demonstrated that some of them are in poor health requiring medical attention. The applicants are deserving of a hearing date on the basis of priority for the appeal that is pending before this Court.
8. We allow the motion. Let the appeal file be placed before the President, Court of Appeal, to allocate a hearing date on the basis of priority. Costs of the motion will be in the appeal.

**DATED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF JULY, 2024.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

**J. MATIVO**

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**JUDGE OF APPEAL**

**G. W. NGENYE - MACHARIA**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

