



Bichanga & 4 others v County Government of Nakuru & another (Employment and Labour Relations Cause 206 of 2018) [2025] KEELRC 1688 (KLR) (11 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1688 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE 206 OF 2018**

**AN MWAURE, J
JUNE 11, 2025**

BETWEEN

**NORAH KWAMBOKA BICHANGA 1ST CLAIMANT
JANE NYAMBUTU IGOGO 2ND CLAIMANT
SALOME WAMBUI MUNGAI 3RD CLAIMANT
JACKLINE KAWIRA NJABAN 4TH CLAIMANT
JOYCE WANJIKU NJOROGE 5TH CLAIMANT**

AND

**COUNTY GOVERNMENT OF NAKURU 1ST RESPONDENT
NAKURU COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT**

RULING

1. The 5th Claimant/Applicant filed a Notice of Motion dated 12th November 2024 under Certificate of Urgency seeking the following orders that:
 1. Spent
 2. This Honourable Court be pleased to issue an order granting leave to the law firm of Ndegwa & Ndegwa Advocates to come on record for the 5th Claimant/Applicant in place of Oumo & Co. Advocates after judgment in this matter.
 3. This Honourable Court be pleased to enlarge the time within which the 5th Claimant/Applicant may file and serve her Notice of Appeal against the Judgement of the Honourable Justice David Nderitu delivered in this matter on the 25th July, 2024.



4. The Draft Notice of Appeal filed herewith be deemed to have been duly filed upon payment of the requisite fees.
5. The costs of this Application be provided for.
2. The application is brought to be expressed under sections 1A, 1B and 3A of the *Civil Procedure Act* Cap 21, section 7 of the *Appellate Jurisdiction Act*, Rules 8 (1) of the Employment and Labour Relations Court (Procedure) Rules, 2016, Order 9 Rules 9, 10, 11, Order 50 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules 2010, Order 51 Rule 1 of the Civil Procedure Rules 2010 and all enabling provisions of the law.

5th Claimant/Applicant's supporting affidavit

3. The 5th Claimant/Applicant swore the supporting affidavit dated even date as the application.
4. The 5th Claimant/Applicant avers she was first employed by the 1st Respondent, then the Municipal Council of Naivasha, as a Clerical Officer III on 1st December, 2003. However, her appointment was revoked on 21st March 2005, due to alleged irregularities.
5. The 5th Claimant/Applicant avers that in January 2015, she was re-employed as a casual copy typist in the Roads, Transport, and Public Works department.
6. In 2017, the 5th Claimant/Applicant avers that the 1st Respondent issued notices of intended layoffs for all casual labourers, prompting multiple legal actions by affected employees.
7. The 5th Claimant/Applicant avers that, along with four co-claimants, they filed a suit challenging the layoffs, while other affected workers pursued separate cases in the Nakuru Employment and Labour Relations Court (Petition No. 13 of 2017) and the Nakuru Chief Magistrates Court (Employment Cause No. 12 of 2018).
8. The 5th Claimant/Applicant avers that the same firm of advocates, Ouma & Co. Advocates, represented both her and the other Claimants in the cases in Nakuru Employment and Labour Relations Court (Petition No. 13 of 2017) and the Nakuru Chief Magistrates Court (Employment Cause No. 12 of 2018).
9. The 5th Claimant/Applicant avers that while 2 cases were resolved through a settlement, her case in Nakuru Employment and Labour Relations Court (Petition No. 13 of 2017) proceeded to a full hearing and was dismissed on 25th July 2024.
10. Aggrieved by the ruling, the 5th Claimant/Applicant avers that she sought to appeal, but her initial advocates declined to file a Notice of Appeal.
11. The 5th Claimant/Applicant avers that she then engaged a different firm, which filed the Notice of Appeal on 19th August 2024. However, the said Notice of Appeal has not been endorsed by the Deputy Registrar, preventing timely service to the Respondent.
12. The 5th Claimant/Applicant avers that through her advocates, they have since visited the registry and requested typed proceedings to facilitate the appeal process.
13. The 5th Claimant/Applicant avers that through her advocates, they have actively pursued the intended appeal and believe it has a strong chance of success.



14. The 5th Claimant/Applicant avers that through her advocates, they seek the court's leave to extend the time for filing and serving the Notice of Appeal, emphasizing their commitment to prosecuting the case.
15. The 5th Claimant/Applicant avers that the delay in filing was not intentional, and argued that granting the extension is necessary to ensure fairness and justice.
16. The 5th Claimant/Applicant urged this Honourable Court to allow the application as prayed.

Respondent's replying affidavit

17. The Respondent opposed the application vide replying affidavit dated 20th December 2024, sworn by Francis Kihoro Wagachira, the Respondent's Principal Legal Officer.
18. The Respondent avers that it has been over 4 months since judgment was delivered by Honourable Justice David Nderitu on 25th July 2024.
19. The Respondent avers that the period within which to file the Notice of Appeal lapsed on 8th August 2024.
20. The Respondent avers that the 5th Claimant/Applicant has not given any good or sufficient cause for the delay in filing the appeal within the prescribed timelines.
21. The Respondent avers that the attempts by the 5th Claimant/Applicant's advocates to file the Notice of Appeal on 19th August 2024 were clearly out of time.
22. The Respondent avers that no explanation has been given on what barred the 5th Claimant/Applicant from requesting certified copies of the proceedings within the prescribed time or at the time prescribed for lodging the Notice of Appeal.
23. The Respondent avers that the 5th Claimant/Applicant ought not to blame her inaction on the part of her previous counsels on record.
24. The Respondent avers that its advocates advise by citing the Court of Appeal decision in *Habo Agencies Limited v Wilfred Odhiambo Musingo* [2015] eKLR, stating that courts have consistently held that litigants cannot solely blame their advocates for errors in handling a case. Parties must take an active role in monitoring and following up on their matters, even when represented by legal counsel. Responsibility for the case ultimately lies with the litigant, ensuring their interests are properly safeguarded.
25. The Respondent avers that the application is mischievous, contemptuous and an abuse of and misuse of the judicial process.
26. The Respondent avers that the memorandum of appeal filed is defective, incompetent and null and void ab initio.
27. The Respondent urges this Honourable Court to find that the application is unmeritorious and be dismissed with costs.
28. Parties canvassed the application by way of written submissions.

5th Claimant/Applicant's written submissions

29. The 5th Claimant/Applicant submitted that the application before this Honourable Court was filed without undue delay and that they consistently expressed dissatisfaction with the judgment, intending



to appeal. The 5th Claimant/Applicant relied on Section 95 of the *Civil Procedure Act*, which allows courts to extend time limits. In *Kiai Mbaki & Others V*

Gichuhi Macharia & Another [2005] eKLR the Court of Appeal held that litigants should not suffer due to their advocates' mistakes. In *Nicholas Kiptoo Arap Korir Salat V Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, laid down the principles for extension of time, which include:

- i. The length of delay and reason for the delay;
- ii. The degree of prejudice to the opposing party; and
- iii. Whether there is a reasonable explanation for the delay

30. The 5th Claimant/Applicant submitted that she acted promptly upon realizing her previous advocates had failed to file the Notice of Appeal and engaged new counsel. The 5th Claimant/Applicant submitted that denying her leave to file the appeal would be unjust, as procedural technicalities should not override substantive justice. Additionally, the 5th Claimant/Applicant submitted that seeking the court's leave and approval for a change of advocates, arguing that it will not prejudice the Respondents.
31. In conclusion, the 5th Claimant/Applicant urged this Honourable court to exercise its discretion in her favour, allowing the application as prayed by filing and serving the Notice of Appeal out of time to ensure fairness and justice.

Respondents' written submissions

32. The Respondents relied on the case of *Nicholas Kiptoo Arap Korir Salat V Independent Electoral and Boundaries Commission & 7 Others* (Supra), which lays down the principles for extension of time.
33. The Respondents submitted that the judgment in this matter was delivered on 25th July 2024, and the 14-day period for filing a Notice of Appeal lapsed on 8th August 2024. The Respondent also submitted that the firm of Ndegwa & Ndegwa filed a Notice of Appeal on 19th August 2024 without first filing a notice of change of advocates, despite the 5th Claimant/Applicant initially being represented by Oumo & Co. Advocates.
34. Additionally, the Respondents submitted that the 5th Claimant/Applicant requested typed proceedings, judgment, and decree on 25th October 2025, despite having legal representation. The Respondents argued that this situation is procedurally irregular and legally inconsequential. The Respondents relied on the case of *Nicholas Omondi v A Rocha Limited* [2016] eKLR, where the court held that if a new advocate is to take over, a notice of change of advocate must be filed. Judge Okwengu, JA, in *Kenya Agricultural Research Organization v. Stephen Ngaruiya Kyanja* Civil Appeal No. 215 of 2015, emphasized that such a notice is necessary only when changing from an existing advocate. Since L. Wahome was already on record, J.M. Njenga could only come on record by filing a notice of change. The failure to do so rendered the amended notice of motion incompetent, leading to its dismissal.
35. The Respondents submitted that the 5th Claimant/Applicant's delay in filing the application was excessive. The Respondents contended that the Notice of Appeal was irregular and that the 5th Claimant/Applicant's request for typed proceedings on 25th October 2024, three months after the judgment, was untimely and merely an afterthought.
36. The Respondents submitted that the 5th Claimant/Applicant solely blames her previous advocates for failing to file an appeal. The Respondents contended that this reason alone is insufficient for the



court to exercise its discretion in the 5th Claimant/Applicant. The Respondents relied on the case of *Habo Agencies Limited V Wilfred Odhiambo Musingo* (supra), the court held that courts have consistently held that litigants cannot solely blame their advocates for errors in handling a case. Parties must take an active role in monitoring and following up on their matters, even when represented by legal counsel. Responsibility for the case ultimately lies with the litigant, ensuring their interests are properly safeguarded.

37. In *Rajesh Rughani v Fifty Investment Ltd. & Another* [2005] eKLR the Court of Appeal held as follows:

“It is not enough simply to accuse the Advocate of failure to inform as if there is no duty on the client to pursue his matter. If the Advocate was simply guilty of inaction, that is not excusable mistake which the Court may consider with some sympathy”.

38. In *Bains Construction Co. Ltd. v John Mzare Ogowe* [2011] eKLR, the court observed as follows:

“It is to some extent true to say mistakes of Counsel as is the present case should not be visited upon a party but it is equally true when Counsel as agent is vested with authority to perform some duties and does not perform as principal and does not perform it, surely such principal should bear the consequences”.

39. The Respondents submitted that the 5th Claimant/Applicant’s justification for the delay is inadequate and does not merit the court’s discretion to grant an extension for filing the appeal out of time. The Respondents contended that the reasons provided do not sufficiently warrant leniency in procedural timelines.

40. The Respondents also submitted that the 5th Claimant/Applicant has failed to demonstrate any reasonable chance of success for the appeal, and out of the five claimants, only the 5th Claimant/Applicant wanted to proceed, while the others were satisfied with the court’s judgment. The Respondents further submitted that the 5th Claimant/Applicant has not provided a draft memorandum of appeal for the court’s consideration.

41. The Respondents submitted that litigation must come to an end and that the court should not exercise discretion where the delay has been excessive. The Respondents further contended that any documents filed by the Applicant’s advocates without first obtaining an order to come on record are legally inconsequential, citing the case of *Nicholas Omondi v Rocha Limited* (Supra) in support of that proposition.

42. Consequently, the Respondents urge this Honourable court to dismiss the 5th Claimant/Applicant’s Notice of Motion dated 12th November 2024 with costs.

Analysis and determination

43. The court has considered the application, the supporting affidavit, replying affidavit and rival submissions by counsels; the issue for determination is whether the application dated 12th November 2024 is merited.

44. Order 9 Rule 9 of the Civil Procedure Rules provides as follows:

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—



- (a) upon an application with notice to all the parties; or
- (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

45. In *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* (Supra), has been precluded in the earlier part of this ruling on the principles of extension of time.
46. In this instant case, the 5th Claimant/Applicant in her supporting affidavit stated that she was aggrieved by the Judgment of the Justice David Nderitu, she wanted to appeal and her advocates on record, Ouma & Co. Advocates, refused to come ahead in appealing the case despite informing them earlier on her intentions of appealing.
47. According to the 5th Claimant/Applicant’s supporting affidavit, it appears that the firm of Ouma & Co. Advocates was not cooperative. When judgment has been passed, the litigant has the option of changing advocates vide a consent or application as per Order 9 Rule 9 of the Civil Procedure Rules and according to Article 50 (1)(g) of *the Constitution*. The 5th Claimant/Applicant is at liberty to pick advocate of her choice to represent her. Also, it was on the 5th Claimant/Applicant’s constitutional right to appeal against the court’s decision if she is not satisfied with the outcome. In *Attorney General v Bala* [2023] KECA 117 (KLR), the Court of Appeal stated as follows:

“The right to appeal is a creature of statute and an appeal can be presented, only: (i) by a party in the suit if he is aggrieved by the judgment; or (ii) by a person who is not a party but who is aggrieved by the judgment if he seeks and gets leave of the court to prefer an appeal against the judgment. Unless a right of appeal is clearly and expressly given by statute, it does not exist. Whereas a litigant has a right to institute any suit of a civil nature in some court or another, no right of appeal can be given except by express words. In other words, a right of appeal infers in no one and therefore an appeal for its maintainability must have the clear authority of law. The right of appeal, which is a statutory right, can be conditional or qualified. If the statute does not create any right of appeal, no appeal can be filed.”

48. On the principles of extension of time, the court is of the considered view that the 5th Claimant/Applicant has satisfied those principles laid down in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* (Supra). The same are the length of delay and the reasons for delay. Also the degree of prejudice, the opposing party is likely to suffer and whether there is a reasonable explanation for the delay.
49. The court is satisfied the Applicant did not waste a lot of time to engage another lawyer when her original lawyer was slow in acting. The main cause of delay was the negligence of her former advocate. The judgment was delivered on 25th July 2024 and this application was filed on 12th November 2024. The court is persuaded by case of *Kiai Mbaki & Others v Gichuhi Macharia & Another* [2005] eKLR the court reiterated that a litigant should not be condemned due to the in advertence of their counsel. Also, Section 95 of the *Civil Procedure Act* provides as follows-

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may in its discretion from time to time enlarge such period even though the period originally fixed or granted may have expired.”

50. The court has been asked to allow Ndegwa and Ndegwa Advocates to come on record for the 5th Claimant in place of Ouma & Co. Advocates. The court finds no prejudice will be suffered by the Respondent or any other person and so that prayer is granted. The firm of Ndegwa & Ndegwa



Advocates are granted leave to come on record for the 5th Claimant/Applicant in place of Ouma & Co. Advocates after the judgment was delivered.

51. The court has also allowed enlargement of time within which the 5th Claimant/Applicant may file and serve their Notice of Appeal against the judgment of the Honourable Justice David Nderitu delivered on 25th July 2024.
52. The draft notice of appeal filed herewith is deemed to be duly filed upon payment of the assessed fees.
53. The 5th Claimant/Applicant is to file and serve the record of Appeal within 30 days from this date.
54. Costs will be in the intended appeal.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 11TH DAY OF JUNE, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

