



**Amayai v Thiga (Employment and Labour Relations Appeal  
E169 of 2024) [2025] KEELRC 2228 (KLR) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2228 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E169 OF 2024**

**DKN MARETE, J**

**JULY 23, 2025**

**BETWEEN**

**JULIUS ALUNGOLI AMAYAI ..... APPELLANT**

**AND**

**JOYCE MURUGI THIGA ..... RESPONDENT**

**JUDGMENT**

1. This appeal arises from the judgment of delivered on 2nd May 2024 in MCELRC No. E1472 of 2020, wherein the appellant’s claim for unfair termination and underpayment was dismissed in its entirety. The appellant being aggrieved by the said judgment filed this appeal seeking to set aside the lower court’s decision and have his claim allowed.
2. The appellant filed a Notice of Motion dated 13th June 2024, seeking enlargement of time to file the appeal out of time to which the respondent opposed. The appeal raises two primary issues:
  1. Whether the delay in filing the appeal was inordinate and unjustified.
  2. Whether the lower court erred in finding that no employment relationship existed between the appellant and the respondent.
3. The respondent maintains that the appeal is incompetent, filed out of time, and lacks merit. She argues that the appellant failed to prove an employment relationship and that the lower court’s decision was sound in law and fact.
4. This judgment evaluates the parties’ submissions, the applicable law, and the evidence on record to determine the merits of the appeal.
5. The appellant contends and submit that the Respondent was his employer by virtue of paying his salary. He relies on Section 2 of the *Employment Act*, 2007 which defines an employee as a person employed for wages or salary. He argues that the lower court erred in disregarding this principle.



6. On the issue of agency the appellant submits that even if the respondent acted as an agent for other tenants, she was still an employer under Section 2 of the [Employment Act](#), 2007 which includes agents in the definition of an employer.
7. On the issue of delay in filing the appeal out of time, the appellant admits filing the appeal 8 days late but argues that the delay was due to the time taken to obtain certified copies of the judgment and proceedings. He relies on Section 79G of the [Civil Procedure Act](#), Chapter 21 Laws of Kenya and the Supreme Court authority of Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others [2014] eKLR, which outlines principles for extending time.
8. It is the Appellant's other case and submission that the trial court misapplied the law by requiring a written contract as proof of employment ignoring binding precedents such as Kenya Hotels & Allied Workers Union v Alfajiri Villas [2014] eKLR which recognizes implied employment relationships. It also failed to consider that the Respondent acted both personally and as an agent of the tenants. The Appellant seeks orders setting aside the lower court's judgment and allowing his claim with costs.
9. The Respondent in her written submissions, opposes the grounds of the timeliness of appeal. The Respondent argues that the appeal was filed 10 days late not 8 as claimed by the appellant and that the delay was not sufficiently explained. She cites Section 79G of the [Civil Procedure Act](#) and the and the authority of Diplack Kenya Ltd v William Muthama Kitonyi [2018] eKLR which emphasis the requirement of good and sufficient cause for extending time.
10. The Respondent further avers and submit that there was no employment relationship inter partes. The respondent denies being the appellant's employer. She posits that she was merely a tenant who volunteered to manage a communal kitty for paying guards. The appellant admitted there was no contract between them. The appellant knew his employers were all the tenants collectively, not her personally.
11. Lastly, the Respondent avers that there was no termination of the employment of Appellant. She asserts that the appellant abandoned his duties after going on leave and failing to return on time. She denies terminating his employment. The respondent relies on Sections 107–109 of the [Evidence Act](#), Chapter 80, Laws of Kenya in support of their submission that the appellant failed to discharge his burden of proving employment or unlawful termination. The respondent urges the court to dismiss the appeal and uphold the lower court's judgment.
12. The following issues arise for determination;
  1. Whether the appeal was filed out of time and, if so, whether the delay should be excused.
  2. Whether an employment relationship existed between the appellant and the respondent.
  3. Whether the appellant was unlawfully terminated.
  4. Whether the appellant is entitled to the reliefs sought.
13. On timeliness of the Appeal, it is noted that the judgment was delivered on 2nd May 2024 and the appeal was filed on 11th June 2024, 8 days outside the 30-day statutory period. The appellant argues that the delay was due to the time taken to obtain certified copies of the judgment and proceedings, which he requested on 6th May 2024 and received on 31st May 2024. Section 79G of the [Civil Procedure Act](#) allows appeals to be filed out of time if the appellant shows "good and sufficient cause." The Supreme Court in Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others [2014] eKLR outlined factors for extending time, including: reasonableness of the delay, prejudice to the respondent and whether the application was filed without undue delay.



14. The delay of 8 days was not inordinate and the appellant has provided a plausible explanation. The Respondent has not demonstrated any prejudice likely to be suffered if this application is allowed. The application is therefore sustained and the appeal admitted out of time.
15. The crux of this appeal is whether the respondent was the appellant's employer. The Appellant's argument is the respondent paid his salary. He relies on Section 2 of the *Employment Act, 2007* to insinuate that the Respondent was his employer. She acted as an agent for other tenants which still qualifies her as an employer under the Act. The Respondent's case is that she was merely a tenant managing a communal kitty. The appellant admitted there was no contract between them and his true employers were all the tenants collectively. Agreeably, Section 2 of the *Employment Act, 2007* defines an employer to include an agent. This is espoused in the authority of *Kenya Hotels & Allied Workers Union v Alfajiri Villas [2014] eKLR* where the court held that employment relationships can be inferred from conduct, not just written contracts. In this case, the Respondent was not the appellant's employer in her personal capacity. She acted as a conduit for payments from all tenants. The appellant knew this and even admitted it in cross-examination. The lower court correctly found that there no employment relationship between the parties.
16. The appellant claims he was unlawfully terminated while the respondent argues he abandoned his duties. The appellant went on leave on 1st April 2020 and returned on 28th June 2020, well beyond his scheduled return date. He provided no proof that he communicated his whereabouts to the respondent. The respondent sent him part of his salary via M-Pesa, which does not prove she terminated his employment. After missing out in action for times beyond return date from leave, the Respondent was forced to hire another person to perform the security duties of the Appellant. This court therefore find that the appellant abandoned his duties and there was no case of termination. It is not supported by any evidence and therefore falls by the way side.
17. I am therefore inclined to dismiss the appeal with orders that each party bears their cost of the same.

**DELIVERED, DATED AND SIGNED THIS 23<sup>RD</sup> DAY OF JULY 2025**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

1. Mr. Mwangi instructed by Mwangi Mosomi & Company Advocate for the Appellant.
2. Mr. Karanja instructed by Joe Nganga & Associates Advocates for the Respondent.

