



Maloba v Ken Iron & Steel Limited (Employment and Labour Relations Cause E229 of 2024) [2025] KEELRC 2224 (KLR) (23 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2224 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E229 OF 2024**

DKN MARETE, J

JULY 23, 2025

BETWEEN

JARED MASONI MALOBA APPLICANT

AND

KEN IRON & STEEL LIMITED RESPONDENT

RULING

1. This is an application by way of Notice of Motion dated 4th August 2024. It seeks the following orders of court;
 1. That the court be pleased to grant an order extending time for filing an appeal against the decision of Honourable Becky Cheloti delivered on 29th May 2024.
 2. That costs be awarded to the applicant.
2. The application is supported by the affidavit of Willis Wetaba, Advocate for the applicant, sworn on 4th August 2024. The respondent, opposed the application through Grounds of Opposition dated 6th February, 2025 and a Replying Affidavit sworn by Maurice Achola Ogambi on the same date and written submissions filed thereafter.
3. The applicant filed this application seeking extension of time to appeal against the judgment delivered on 29th May 2024 in ELRC Case No. E1264 of 2021. The judgment dismissed the applicant's claim for wrongful termination and other related reliefs.
4. The applicant contends that the judgment was scheduled for delivery on 29th May 2024 but the court was not sitting and parties were advised that judgment would be delivered on notice. He avers that no notice was served upon his advocates and they were all this time unaware of the judgment's delivery. Further, he posits that the mobile number previously used for communication belonged to a deceased advocate and thus notification was not received.



5. The respondent opposes the application arguing that the delay is inordinate, the reasons given are unsatisfactory and the applicant failed to demonstrate diligence in following up on the judgment. The respondent also contends that the applicant filed a record of appeal prematurely thus rendering the application an attempt to remedy an illegality.
6. The application is premised on Rule 18 of the Employment and Labour Relations Court (Procedure) Rules, 2024 which grant this court discretion to extend time for filing of appeals. The principles governing such applications are well settled as outlined in the authority of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR where the Supreme Court held that extension of time is not a right but a discretionary remedy and the applicant must lay a satisfactory basis for the delay.
7. In determining whether to grant the extension, this court must consider four main factors. The first factor is the length of the delay. The judgment was delivered on 29th May 2024 and the application was filed on 4th August 2024, approximately two months after the lapse of the thirty (30) day appeal period. While this is not excessively prolonged, the delay must be justified.
8. In *Omar Shurie v Marian Rashe Tafar*, Civil Application No. 107 of 2020 the court emphasized that the length of delay is a crucial factor, it must be weighed against the reasons provided. A delay of two months, as in this case, is not inordinate if satisfactorily explained.
9. The second factor is the reason for the delay. The applicant attributes the delay to lack of notice of judgment delivery and the inability to access communication due to the death of a partner in the law firm whose mobile number was previously used for court notifications. This is countered by the Respondent's arguments that the applicant could have checked the e-filing system or the court registry for updates. While this is a valid point, this court must consider whether the applicant acted reasonably. In the authority of *Susan Ogutu Oloo & 2 Others v Doris Odindo Omolo* (2019) eKLR the court held that where an advocate's failure contributes to delay, the court should assess whether the litigant was personally at fault. Here, the applicant relied on his legal representatives and the death of an advocate is an exceptional circumstance that may justify some leniency and or consideration.
10. The third factor the court must consider is the arguability of the appeal. The draft memorandum of appeal raises substantive legal issues, including;
 - * Alleged misapplication of Sections 41, 10(7), and 74 of the *Employment Act*, 2007 (procedural fairness in termination and record-keeping obligations).
 - * Failure to consider evidence on salary arrears.
 - * Denial of a certificate of service, which is a statutory right under the *Employment Act*, 2007.
11. In the authority of *Sayers v Clarke Walker (A Firm)* [2002] EWCA Civ 645 the court held that where an appeal raises arguable points of law, it is in the interest of justice to permit its hearing, provided other factors such as delay and prejudice do not overwhelmingly militate against it.
12. The last but not the least factor is that the court must consider is prejudice to the respondent. The respondent argues that allowing the appeal would prolong litigation, causing financial and administrative burden. However, the judgment was delivered less than a year ago and the respondent has not demonstrated irreparable harm if the appeal proceeds. The authority of *H. Young Company (EA) Ltd v Mwangi* [2023] KEELRC 497 where the court held that while litigation must eventually conclude, minor delays should not bar a meritorious appeal where no substantial prejudice is demonstrated.



13. In balancing these factors, the court finds that;
- * The delay, though not insignificant, is not egregious.
 - * The death of an advocate constitutes an exceptional circumstance that partly explains the delay.
 - * The appeal raises arguable legal issues that deserve judicial consideration.
 - * The respondent has not shown irreparable prejudice.
14. I am therefore inclined to allow the application and order as follows;
- i. The Appellant/Applicant is granted fourteen (14) days from the date of this ruling to file and serve the appeal.
 - ii. The record of appeal already filed shall be deemed properly filed upon payment of the requisite fees.
 - iii. Each party shall bear their costs of this application.

DELIVERED, DATED AND SIGNED THIS 23RD DAY OF JULY 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Wetaba instructed by Wetaba, Were & Associate Advocates for the Appellant/Applicant.

Miss. Atieno holding brief for Maranga instructed by Maranga Nyangute & Company Advocates for the Respondent.

