

**IN THE COURT OF APPEAL
AT NAIROBI**

(CORAM: GATEMBU, JA. (IN CHAMBERS))

CIVIL APPEAL (APPLICATION) NO. E365 OF 2024

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.....	20TH APPLICANT
BIANCA NYAMBURA.....	21ST APPLICANT
PHENEY MWIMWA.....	22ND APPLICANT
MICHELLE OWILI.....	23RD APPLICANT
STELLAH WANJOHI.....	24TH APPLICANT
DONELLA LANGAT.....	25TH APPLICANT
JOYCE WAMBUI NJUBI.....	26TH APPLICANT
DAVID CHWEYA.....	27TH APPLICANT
MOREEN CHILO.....	28TH APPLICANT
BRENDA ANYANGO MIDAMBA.....	29TH APPLICANT
PURITY NGETICH.....	30TH APPLICANT
JOSEPHINE OMONDI.....	31ST APPLICANT
IAN MWANGI DUNCAN.....	32ND APPLICANT
FAITH CHELANGAT.....	33RD APPLICANT
ESTHER GATHONI MAINA.....	34TH APPLICANT
BANCY NYAKIO NJIRU.....	35TH APPLICANT

YVONNE OCHIENG.....	36TH	APPLICANT
EVA MAKENA MUTEA.....	37TH	APPLICANT
JOYCE MUSAU.....	38TH	APPLICANT
SELESTINE AKELO.....	39TH	APPLICANT
JOSEPHINE FLORA ATIENO OKENO.....	40TH	APPLICANT
LUCY WAMBUI.....	41ST	APPLICANT
FELICITY NDUTA KAMWANGA.....	42ND	APPLICANT
WINNIE WANJIKU WACHIRA.....	43RD	APPLICANT
JANNAT JUMA.....	44TH	APPLICANT
JOSECK MOMANYI.....	45TH	APPLICANT
CAREN SHANICE GUMBA.....	46TH	APPLICANT
RHODA MUKOLWE.....	47TH	APPLICANT
STEPHEN KARIUKI.....	48TH	APPLICANT
COREEN NAMWANZO GONZO.....	49TH	APPLICANT
GERALDINE KOKI.....	50TH	APPLICANT
GRACE WARIARA MUHOYA.....	51ST	APPLICANT
KEBASO MARAGIA.....	52ND	APPLICANT
IRENE EKIRAPA.....	53RD	APPLICANT
KELVIN MUTHOKA.....	54TH	APPLICANT
ISHMAEL MWAI.....	55TH	APPLICANT
FRANCIS MBITHI.....	56TH	APPLICANT
IRENE AWUOR OTULA.....	57TH	APPLICANT
SHARON ALUVISA.....	58TH	APPLICANT
CAROLINE WAMBUI NJOROGE.....	59TH	APPLICANT
JOYCE MBUGUA.....	60TH	APPLICANT
DAVID KURIA MWANGI.....	61ST	APPLICANT
FLAVIANE MUTURI.....	62ND	APPLICANT
JEMIMAH MUROKI.....	63RD	APPLICANT
JOHNSTONE MUTHEE.....	64TH	APPLICANT
JAMES OBINGO.....	65TH	APPLICANT
CAROLINE NYOKABI KARIUKI.....	66TH	APPLICANT
MERCY ALUSA.....	67TH	APPLICANT
JANEFFA MAREMBA MWAKALE.....	68TH	APPLICANT
DAMARIS OLUOCH.....	69TH	APPLICANT
HELLEN MALAGO.....	70TH	APPLICANT
EVERLYNE AKOTH OTIENO.....	71ST	APPLICANT
SAIDA YUSUF.....	72ND	APPLICANT
LUCY MOBAGI.....	73RD	APPLICANT
LEONIDA NGETICH.....	74TH	APPLICANT
JOSEPH GICHUHI.....	75TH	APPLICANT
SALLY KOROSS.....	76TH	APPLICANT
NASEEM MUKANDA.....	77TH	APPLICANT
PERIS LUTA.....	78TH	APPLICANT

GLADYS CHEROTICH RONO	79TH APPLICANT
DIANA IRERI	80TH APPLICANT
BILHA MUTHONI MBAIRE	81ST APPLICANT
ANDRE ETABALE WETINDI	82ND APPLICANT
MOSES KIBET	83RD APPLICANT
ELIZABETH ODHIAMBO	84TH APPLICANT
JERRY OTIENO	85TH APPLICANT
ANN MUTHENGI	86TH APPLICANT
DIANA KERUBO ORWARU	87TH APPLICANT
MERCY OLOO	88TH APPLICANT
RUTH MITA	89TH APPLICANT
JACKLYNE MUTHEE	90TH APPLICANT
MARK KHAEMBA	91ST APPLICANT
SAMANTHA KIMANI	92ND APPLICANT
SHARON ONONO	93RD APPLICANT
SIMON KIMANI CHEGE	94TH APPLICANT
NICHOLAS MUTHONI	95TH APPLICANT
STELLAH WAMAITHA	96TH APPLICANT
IRENE MUIYURO	97TH APPLICANT
LYDIA DANDA	98TH APPLICANT
LUCY KALUNGU	99TH APPLICANT
GRACE MUIRURI	100TH APPLICANT
MERCY CHEGE WAMBUI	101TH APPLICANT
RALPH MSHENGA	102TH APPLICANT
VERONICA OKOTH	103RD APPLICANT
CATHERINE KARANJA	104TH APPLICANT
MARY-EDNA ACHIENG OBALLA	105TH APPLICANT
ANNASTACIA NDUNGE NZUKI	106TH APPLICANT
FAITH NGALA	107TH APPLICANT
YVONNE KIRAGU	108TH APPLICANT
ELIZABETH SAXTON	109TH APPLICANT
LILIAN OTIENO	110TH APPLICANT
CHRISTINE NYIBORI ARUKA	111TH APPLICANT
ROSEMARY CHEGE	112TH APPLICANT
SHEILA SAIDIMU	113TH APPLICANT
ANTONY BUYEKA	114TH APPLICANT
GRACE OMARI	115TH APPLICANT
MIRIAM NYAMBURA MURIITHI	116TH APPLICANT
RITA ODUNDO	117TH APPLICANT
GRACE WANJIKU KAGWE	118TH APPLICANT
NZAKWA VENESSA	119TH APPLICANT
CALVINCE ONYANGO	120TH APPLICANT
MILLCENT KILONZO	121ST APPLICANT

JOSEPH MUTUI..... 122ND APPLICANT
DERRICK MUNENE..... 123RD APPLICANT
SYLVIA WANJIKU WAWERU..... 124TH APPLICANT
HILLARY ROTICH..... 125TH APPLICANT
WINNIE NJERI NJOROGE..... 126TH APPLICANT
KEVIN WACHIRA..... 127TH 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

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.