



**Bakhit - Chairman Wanguru Jamia Mosque Committee & another v Ndegwa & 13 others (Civil Appeal (Application) E006 of 2025) [2025] KECA 2167 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2167 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) E006 OF 2025  
A ALI-ARONI, JA  
DECEMBER 11, 2025**

**BETWEEN**

**ISMAIL BAKHIT - CHAIRMAN WANGURU JAMIA MOSQUE COMMITTEE &  
ANOTHER & ANOTHER ..... APPLICANT**

**AND**

**MICHAEL MUTHIKE NDEGWA & 13 OTHERS & 13 OTHERS RESPONDENT**

*(Being an application for amendment, and leave to file a supplementary record of appeal and enlargement of time to file submissions in the pending appeal against the Judgment of the High Court at Chuka (Gitari, J.) delivered on 1st February, 2024 in HC Succession Cause No. 347 of 2013)*

**RULING**

1. Before the Court is an application by way of a notice of motion dated 17<sup>th</sup> September 2025, brought mainly under rules 4 and 90 of the Court of Appeal Rules, 2022 (the Rules), and section 3A & 3B of the *Appellate Jurisdiction Act*, Article 159 of *the Constitution* are also cited. It seeks an amendment to correct the misspelt name of the appellant and to correct the citation of the 1<sup>st</sup> respondent; leave to file a supplementary record of appeal, and for the documents already filed to be deemed to be properly on record.
2. The application is predicated on the grounds on the face of the application and the affidavit of the applicants' counsel, Ali Mahmud Mohamed sworn on 17<sup>th</sup> September 2025, where counsel deposed that the appellants seek to amend the notice of appeal dated 14<sup>th</sup> November, 2024, the memorandum of appeal and record of appeal both dated 27<sup>th</sup> December 2024, to correct a misspelling of the 1<sup>st</sup> appellant's name, and to cite the 1<sup>st</sup> respondent correctly as the 1<sup>st</sup> respondent is being referred to as "applicant" instead of an administrator of the estate of Ndegwa Warui (Deceased); and further leave to file a supplementary record is being sought to include omitted pleadings. Counsel averred



further that these errors were only identified during the preparation of the submissions; they were not intentional; the applicants were not the principal parties in the Succession Cause and were enjoined to the proceedings as interested parties after adverse orders were issued against them, they did not notice the errors at the time; the documents to be included in the supplementary record are crucial for the proper determination of the appeal which raises significant legal and factual issues and has a high likelihood of success; the proposed amendments and the supplementary records will not alter the essence of the appeal and it is in the interest of justice and fairness that the prayers sought be granted.

3. In his written submissions dated 1<sup>st</sup> December 2025, counsel reiterated the documents to be amended as outlined in the supporting affidavit and submitted that he noted the oversight during the preparation of the submissions. The errors are unintentional. In support, he refers to *John Mugambi & Mugambi & Company Advocates vs. Kiama Wangai* [2021] KECA 952 (KLR), where this Court held; -

“...parties to a suit have the right to amend their pleadings at any stage of the proceedings before judgment and that courts should liberally allow such amendments. There are situations when the court will refuse to exercise its discretion to allow amendments. Such cases include where a new or inconsistent cause of action is introduced; where vested interests or accrued legal rights will be adversely affected; where prejudice or injustice which cannot be properly compensated in costs is occasioned to the respondent.”

4. Counsel argued further that failure to grant the orders could result in a misjoinder, which would prejudice the appeal, yet the amendments will not change the substratum of the appeal. In support of this contention, he referred to *Kenya Nut Limited vs. Muthoni* (Civil Appeal (Application) 61 of 2018) [2025] KECA 656 (KLR).
5. On the filing of a supplementary record, counsel contended that crucial pleadings, which are part of the record, were inadvertently left out of the initial record of appeal. The mistake is not deliberate and does not prejudice the respondents.
6. The 12<sup>th</sup> respondent filed submissions in person stating that he does not oppose the application.
7. The other respondents, despite being served with the application and the hearing notice, have neither filed their responses nor any submissions.
8. I have considered the application, the supporting affidavit and submissions by the applicant. The issues for determination are; whether to grant leave to the applicant to amend and rectify the names and description of the 1<sup>st</sup> appellant and the 1<sup>st</sup> respondent respectively; whether to grant leave to the applicant to file a supplementary record of appeal, and to deem the one already filed to be properly on record.
9. As regards the amendments being proposed, the same are to correct the spelling of the 1<sup>st</sup> applicant’s name, and to cite the 1<sup>st</sup> respondent as being a representative of the estate of a deceased person. The amendments are proposed to be reflected on the notice of appeal, the memorandum of appeal, and the record of appeal. As stated by the applicant, the proposed amendments do not go to the substratum of the appeal. In *Kenya Nut Limited vs. Muthoni* (Civil Appeal (Application) 61 of 2018) [2025] KECA 656 (KLR) (9 April 2025), this Court held; -

“6. Rule 46 (1) of the Court of Appeal Rules 2022 provides that whenever a formal application is made for leave to amend any document, the amendment shall be set out in writing, lodged with the Registrar and served on the respondent before the hearing of the application or, if not practicable, handed to the Court and to the respondent at the time of the hearing. Being a



discretionary power, it must be exercised judiciously and upon reason, rather than arbitrarily, based on humour or fancy. (See *Kanawal Sarjit Singh Dhim vs. Keshavji Jivraj Shah* [2010] eKLR).”

10. The applicant’s counsel urged that crucial documents were left out of the record of appeal, yet they are the foundation of the appellant’s appeal. Rule 89(1) of the Rules sets out the items to be included in a record of appeal. The rule provides as follows:

1. For the purposes of an appeal from a decision of a superior court in exercise of its original jurisdiction, the record of appeal shall, subject to sub-rule (3), contain copies of the following documents—
  - a. an index of the documents in the record with the numbers of the pages at which they appear;
  - b. a statement showing the address for service of the appellant and the address for service furnished by the respondent and, as regards any respondent who has not furnished an address for service as required by rule 79, that respondent’s last known address and proof of service on him or her of the notice of appeal;
  - c. the pleadings;
  - d. the trial judge’s notes of the hearing;
  - e. the transcript of any shorthand notes taken at the trial;
  - f. the affidavits read and documents put in evidence at the hearing or, if such documents are not in the English language, certified translations thereof;
  - g. the judgment or order;
  - h. the certified decree or order;
  - i. the order, if any, giving leave to appeal; documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant:

Provided that the copies referred to in paragraphs (d), (e) and (f) shall exclude copies of any documents or any parts thereof that are not relevant to the matters in controversy on the appeal.

Further, rule 90 of the Rules provides that:

Where a document referred to in rule 89 (1) and

2. is omitted from the record of appeal, the appellant may, within fifteen days after lodging the record of appeal, without leave, include the document in a supplementary record of appeal filed under rule 94 (3) and, thereafter, with leave of the deputy registrar on application.

11. The documents attached to the intended supplementary record as stated by the applicant and demonstrated by a copy attached to the application are pleadings within the meaning of rule 89(1)(c) and ought to be part of the record. Rule 90 donates the power to consider whether or not to grant leave to file a

supplementary record to the deputy registrar of the Court and



not a Judge or even a bench. The applicant has mixed prayers that ought to be considered separately and by different fora.

12. The prayer for amendment having been properly made before this Court and having found that the prayer is merited, I allow the same and grant fourteen (14) days for the amendments to be effected and the relevant documents filed and served.
13. In line with rule 90 of the Rules, the applicant is at liberty to file an appropriate application before the deputy registrar in line with rule 90 of the Rules.
14. Since the application was not opposed, I make no order on costs

**DATED AND DELIVERED AT NYERI THIS 11<sup>TH</sup> DAY OF DECEMBER, 2025.**

**ALI-ARONI**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

