



REPUBLIC OF KENYA



**Mugane & another v Muruga & 2 others (Civil Appeal (Application)  
38 of 2020) [2025] KECA 2166 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2166 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) 38 OF 2020  
A ALI-ARONI, JA  
DECEMBER 11, 2025**

**BETWEEN**

**GRACE NDIRANGU MUGANE ..... 1<sup>ST</sup> APPLICANT**

**ANDREW GACHINGIRI NGAHU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MARY NJIIRI MURUGA ..... 1<sup>ST</sup> RESPONDENT**

**ISAAC NDIRANGU NJIIRI ..... 2<sup>ND</sup> RESPONDENT**

**JESSEY KAMAU NJIIRI (SUBSTITUTED FOR ELIZAPHAN NJIIRI TOBO  
MURUGA - DCD) ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal against the Judgment of the Environment and Land Court at  
Murang'a (J.G. Kemei. J.) delivered on 26th November 2019 in ELC No. 503 of 2017)*

**RULING**

1. Before the Court is an application by way of a notice of motion dated 11<sup>th</sup> October 2023, brought under rule 16 of the Court of Appeal Rules (the Rules), seeking leave to amend the memorandum of appeal dated 5<sup>th</sup> March 2020 and to file a fresh record of appeal.
2. The application is predicated on the grounds on the face of the application and the averments in the affidavit of the applicants' advocate, J. N. Kirubi sworn on 11<sup>th</sup> October 2023, stating that in the Originating Summons dated 13<sup>th</sup> July 2004, the 1<sup>st</sup> applicant who was then a defendant is referred to as Grace Njeri Mugane; however during the typing of the memorandum of appeal dated 5<sup>th</sup> March 2020, her name was erroneously indicated as Grace Ndirangu Mugane, which error was only noted on 3<sup>rd</sup> October 2023 when the appeal was coming up for case management; it is crucial to amend the memorandum of appeal to correct the anomaly in the names; upon grant of leave to amend, it is would



be necessary to file a fresh record of appeal to reflect the amendment; the proposed amendment does not change the substratum of the appeal in any way.

3. Learned counsel for the applicant has filed submissions dated 2<sup>nd</sup> December 2025. On whether the Court has jurisdiction to allow the amendment, counsel argues that the Court has a broad discretion to allow amendments as provided under Article 159(2)(d) of the *Constitution* of Kenya, and rule 16 of the Rules. In support of his submissions he relied on *Charo vs. Kenya Airways Authority* (Civil Application No. 32 of 2021 (2022) KECA 1316 (KLR)), where the court held that Courts have wide discretion in amending pleadings and that amendments before hearing should be allowed if they do not cause injustice to the other side, and which can be compensated through costs.
4. On whether the amendment sought is necessary for the determination of the appeal, counsel relies on the case of *Central Kenya Ltd vs. Trust Bank Ltd & 5 Others* [2000] KECA 367 (KLR), where this Court held that a party is allowed to make such amendments as maybe necessary for determination of the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, and where no new or inconsistent cause of action is introduced, where there is vested interest or where no accrued legal right is affected; and where the amendment is allowed there will be no injustice caused to the other side.
5. Further, counsel urges that the correction is necessary to harmonise the pleadings before the Court with the trial court record, where the applicant was correctly identified as Grace Njeri Mugane.
6. The respondents have neither filed a response to the application nor submissions despite service.
7. I have considered the application, the supporting affidavit and submissions by the applicant. The issue for determination is whether to grant the applicant leave to amend the memorandum of appeal and to file a fresh record of appeal incorporating the corrected memorandum.

In *Kenya Nut Limited vs. Muthoni* (Civil Appeal (Application) 61 of 2018) [2025] KECA 656 (KLR) (9 April 2025), this Court held:

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).”

8. In the same vein, a memorandum of appeal that seeks to amend, as is the case before me, is a document properly amenable to amendment. (See *Kenya Hotels Limited vs. Oriental Commercial Bank Limited* [2018] eKLR). Looking the ground intended to be included in the amended memorandum of appeal dated 22<sup>nd</sup> August 2018, this Court finds no reason why the amendment should not be allowed. I am satisfied to hold that no prejudice will be occasioned on the respondent who will respond to the same during the hearing of the appeal.”
9. The applicant only seeks to amend the memorandum of appeal to correct the error in the name and to have the name in sync with the name that appears in the trial court records. The proposed amendment is necessary and reasonable, and I find no basis to deny it. Indeed, there is no introduction of new matters, nor will the substratum of the appeal be affected, nor is there a demonstration that the amendment would be prejudicial to the other parties.



10. The prayer sought for the amendment of the memorandum of appeal is hereby granted. A fresh record of appeal to be filed and served within the next 30 days.
11. I make no orders on costs.

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

**ALI-ARONI**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

