

**IN THE COURT OF
APPEAL AT
NAIROBI**

(CORAM: NDOLO, JA (IN CHAMBERS))

**CIVIL APPEAL (APPLICATION) NO E863 OF
2024**

BETWEEN

DICKSON SOLITEI METIAN.....APPLICANT

AND

TURANTA NKURRURA MOILE.....RESPONDENT

*(Being an application for leave to amend the memorandum of
appeal dated 7th October 2024)*

RULING

1. In his notice of motion dated 3rd October 2024, the applicant asks for leave to amend his memorandum of appeal dated 7th October 2024.
2. The application is supported by the appellant's own affidavit and is premised on the grounds that:

- a) the amendment is necessary for final determination of all the issues in controversy;***
- b) the prayers sought in the proposed amended memorandum of appeal were inadvertently excluded from the initial memorandum;***
- c) the new grounds of appeal are founded on evidence canvassed before the***

superior court;

- d) the new issues are anchored on evidence analysis and findings by the trial Judge; and***

e) the amendment will not occasion any prejudice to the respondent.

3. The respondent opposes the application by his replying affidavit sworn on 23rd October 2025. While conceding that this Court has discretion, under **rule 46** of its Rules, to allow amendment of a memorandum of appeal, the respondent cautions that this discretion should be exercised in a manner that does not cause prejudice to the adverse party.
4. I have considered the application, the supporting affidavit and submissions filed by the applicant. I have further considered the respondent's replying affidavit and submissions in opposition to the application.
5. It is not in contest that under **rule 46** of the Rules, this Court has discretion to allow amendment of documents filed before it. As held by this Court in **Kenya Hotels Limited vs. Oriental Commercial Bank Limited [2018] KECA 692 (KLR)** a memorandum of appeal is amenable to amendment pursuant to a proper exercise of this discretion.
6. It has also been held that in determining whether or not to allow an amendment, the Court is required to consider the circumstances of the case, and whether the amendment will further or impede the just determination of the dispute.
7. In its decision in **Lillian Wanja Muthoni Mbogo t/a Sahara Consultants & 5 Others vs. Assets Recovery Agency [2022] KECA 48 (KLR)** this Court stated the following:

“...the power to amend a document under... the Court’s Rules is discretionary. This means that the Court must exercise the power of amendment judiciously by granting leave to amend only where it is in the interest of justice based on the circumstances before the Court. In particular, the Court has to take into account the nature and extent of the amendment, and whether it will assist in the just determination of the real questions in dispute between the parties.”

8. I have looked at the proposed amendments to the memorandum of appeal and have formed the opinion that these amendments are necessary in clarifying the applicant’s appeal before this Court.
9. I have further reached the conclusion that the amendments flow directly from the proceedings in the superior court and no new case is being presented. More importantly, no prejudice will be occasioned to the respondent who will have an opportunity to be heard in opposition to the appeal.
10. For the foregoing reasons, I will allow this application and thereby admit the annexed amended memorandum of appeal as duly filed, subject to payment of applicable court fees.
11. The costs of the application will be in the appeal.

Dated and delivered at Nairobi this 6th day of March, 2026.

L.M. NDOLO

.....
JUDGE OF APPEAL

*I certify that this is
a true copy of the*

original.

Signed

DEPUTY REGISTRAR