



REPUBLIC OF KENYA



**Auto Sterile (EA) Limited v Were (Appeal 19 of 2022)  
[2026] KEELRC 763 (KLR) (13 March 2026) (Ruling)**

Neutral citation: [2026] KEELRC 763 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL 19 OF 2022  
NJ ABUODHA, J  
MARCH 13, 2026**

**BETWEEN**

**AUTO STERILE (EA) LIMITED ..... APPELLANT**

**AND**

**KENNEDY WESONGA WERE ..... RESPONDENT**

**RULING**

1. The Appellant herein filed application dated 4<sup>th</sup> August, 2025 brought under Rules, 16, 45 and 47 of the Employment and Labour Relations Court Procedure Rules, 2024 and Article 159 of *the Constitution*, the inherent power of Court.
2. The Appellant sought for the following orders:-
  - a. Leave be granted to the Appellant to produce the following additional evidence in support of the appeal herein:
    - i. The Appellant’s Employee Handbook.
    - ii. Accurate computation of the overtime hours worked by the Claimant.
    - iii. Proof of part payment of overtime for hours worked on Saturdays.
  - a. Leave be granted to the Appellant to amend the memorandum of appeal in the manner set out in the Draft Memorandum of Appeal annexed herein.
3. The application was supported by grounds on the face of the Application herein and the Affidavit of Moses Mutuku the General Manager of the Appellant herein sworn on 4<sup>th</sup> August,2025 who averred as follows:-
  - a. On 29<sup>th</sup> October 2021 the Trial Court delivered a judgment in favour of the Respondent herein as sought in the Statement of Claim filed in the Trial Court which included:



- i. 12 months compensation for unfair termination of employment.
- ii. Overtime.
- iii. House allowance
  - a. The Appellant was dissatisfied with the whole of the said judgment hence it filed the instant appeal.
  - b. In arriving at the finding on house allowance the court relied on Clause 6 of the Employment Contract which provided that the Claimant was paid a basic salary of Kshs.35,000 and there was no consolidation of housing allowance with the basic pay. The Appellant seeks leave of this court to produce additional evidence comprising of the Employee Handbook which was effective at the material time and contained provisions on consolidation of house allowance with the basic pay.
  - c. In arriving at the finding on overtime pay the court relied on the attendance records filed by the Appellant as well as clause 3 of the Employment Contract which provided that the normal working hours would be between 8 am and 5 pm and overtime would be compensated in accordance with the company policy.
  - d. The Trial Court arrived at a generalized finding that the Respondent worked for 12 hours on average every day from the record of few days sampled. The judgment makes reference to only two days sampled and this assessment was adopted as the average daily hours worked from 6<sup>th</sup> January 2014 to 19<sup>th</sup> August 2019 (a period of about 5 years) when the contract was terminated.
  - e. The Appellant seeks leave of this court to produce additional evidence comprised of:
    - a. The Appellant's Employee Handbook.
    - b. Attendance registers and accurate computation of the overtime hours worked by the Claimant.
    - c. Overtime claim forms and proof of part payment of overtime for hours worked on Saturdays.
    - a. The Appellant did not produce the above documents before the Trial Court as it was relying on the advice of its advocates on record at that time to guide it on the appropriate documents to produce in support of its case and the Appellant's counsel did not inform it that the documents were necessary. As such these critical documents were unfortunately not part of the record. Additionally, despite the Respondent having knowledge of the existence of the Employment Handbook and having received part payment of overtime from the Appellant, did not disclose these material facts to the Trial Court.
    - b. The Appellant instructed its new advocates currently on record after judgment and filing of the appeal and upon further scrutiny of the judgment of the trial court and the typed proceedings that the Appellant through its advocates realized that the court was not properly directed on the applicable policies on house allowance and proper computation of overtime based on the attendance records filed.
    - c. Upon further review and legal advice the Appellant has realized the necessity to amend the Memorandum of Appeal to specify the grounds upon which the appeal is made



and the prayers. The intended amendments are essential for the just determination of the issues in dispute and do not introduce any new cause of action.

- d. The additional evidence that the Appellant seeks to produce is critical as it bears upon the court's decision on the issues in the trial and the evidence would have altered the final holding of the Trial Court.
  - e. That it is necessary to amend the memorandum of claim to ensure clarity and comprehensiveness in presenting the Appellant's appeal before this Court. The proposed amendments are necessary for the proper and just adjudication of this appeal.
  - f. Unless the orders sought are granted, the Applicant stands to suffer prejudice as it will not be able to rely on key evidence of the Appellant's position on the subject matter based on the records presented and there will be a risk of a determination that results in unjust enrichment of the Respondent. On the other hand the Respondent will not be prejudiced by the production of the additional evidence.
4. In response the Respondent filed its grounds of opposition dated 4<sup>th</sup> October, 2025 July, 2024 and averred as follows:-
- SUBPARA a.
- That the Applicant has not met the threshold for granting of the orders sought.
- SUBPARA b.
- That the Applicant is seeking to make a fresh case in appeal and fill up the omissions made during the trial.
- SUBPARA c.
- That the admissibility of the alleged documents is disputed.
- SUBPARA d.
- That the application is inordinately late.
- SUBPARA e.
- That the application is frivolous, vexatious and an abuse of the court process which ought to be dismissed with costs.
5. The Application was dispensed of by written submissions.

### **Appellant's Submissions**

6. The Appellant's advocates Munyao Muthama & Kashindi Advocates filed written submissions dated 3<sup>rd</sup> December, 2025.
7. It was submitted that this application was premised on the provisions of Section 78(1)(d) of the *Civil Procedure Act* which empowers an appellate court to take additional evidence or to require the evidence to be taken as well as Order 42, Rule 27 which equally allows for the production of additional evidence on appeal with leave of the court.
8. That whereas this Court is primarily guided by the Employment and Labour Relations Court (Procedure) Rules, 2024, the Rules do not contain an express provision on production of new evidence on appeal. Counsel relied on the case of Rift Valley Railways Workers Union v Rift Valley Railways



- (Kenya) Limited & another [2014] KEELRC 1453 (KLR) on when the Employment and Labour Rules do not provide redress the court to revert to Civil Procedure Rules.
9. Counsel submitted that in line with the above decision, they shall rely on the provisions of the *Civil Procedure Act* and Rules on production of new evidence on appeal.
  10. On the issue of whether the threshold for admitting new evidence on appeal was met counsel submitted that the threshold for admitting new evidence on appeal was originally set out by the English Court of Appeal in the case of *Ladd v. Marshall* [1954] 1 WLR 1489 which established a three-part test, namely, non-availability, relevance and reliability, for the appellate Court to accept fresh evidence on appeal.
  11. Counsel further submitted that basing reliance on the *Ladd v. Marshall* decision, the Supreme Court of Kenya has proceeded to expand and/or establish the various principles for consideration in the admission of new evidence before appellate courts in *Mohamed Abdi Mahamud vs Ahmed Abdullahi Mohammad & 3 Others* [2018] eKLR.
  12. It was submitted that proceeding from the above principles, firstly the evidence in question could not have been obtained with reasonable diligence for use at the trial by the Appellant. That the Appellant could not reasonably be privy to the great importance of the mentioned documents until the further scrutiny of the judgment of the trial court and the typed proceedings through its new advocates that the same was realized.
  13. Secondly, the evidence in question, if given, would influence or impact upon the result of the verdict, although it need not be decisive. That the additional evidence that the Appellant seeks to produce is critical as it bears upon the court's decision on the issues in the trial and the evidence would have altered the final holding of the Trial Court on the award of overtime and house .
  14. That the Appellant seeks to rely on clause 2.3 of the handbook and to produce the overtime claim forms showing that the Claimant received overtime dues that he had claimed in accordance with the prevailing procedure in the handbook. This will have an impact on the Trial Court's finding that the Respondent was entitled to overtime pay. The new evidence will prove that the Claimant's overtime was paid to him and he confirmed receipt.
  15. It was submitted that Clause 4.2 of the Employee Handbook provided that: "The basic salary is a consolidated figure which takes into account costs that employees may incur to provide themselves with adequate housing." That the import of this clause is that the basic salary provided in the Respondent's contract was a consolidated figure inclusive of house allowance. This has a significant impact on the Trial Court's finding and the entire award of house allowance from January 2014 to August 2019 totaling to Kshs. 432, 058.90. The new documents will assist the court in determining this issue.
  16. Thirdly, Counsel submitted that the additional evidence must be credible in the sense that it is capable of belief. The evidence the Appellant intends to adduce is credible and meets all the requisite standards for relevance and admissibility of such evidence before court.
  17. Fourthly, on the proportionality and prejudice of allowing the additional evidence, counsel submitted that the Respondent will not suffer any prejudice if the documents are admitted. The documents that the Appellant seeks to produce are not voluminous and the Claimant will have the chance to make rebuttals to the same. On the other hand the Appellant stands to suffer great prejudice as it may be condemned to pay overtime dues and house allowance to the Claimant totaling to Kshs. 2, 596, 633.33 yet it had honoured its obligation and paid the overtime during the subsistence of the employment relationship and had paid a consolidated salary in accordance with Section 31 of the



- Employment Act*. Such a determination would result in unjust enrichment of the Claimant through double compensation for overtime and house allowance.
18. It was submitted that in view of the foregoing, the application satisfies the principles for admission of additional evidence.
  19. On the second issue of whether the Appellant should be granted leave to amend the memorandum of appeal counsel relied on Rule 34 and 16 of the Employment and Labour Relations Court (Procedure) Rules, 2024 which provides for the said amendment by filing a supplementary Memorandum of Appeal. Counsel also relied on the case of Central Kenya Ltd v Trust Bank Ltd & 5 others [2000] eKLR, the Court of Appeal held that amendments should be freely allowed at any stage of proceedings.
  20. It was submitted that the draft amended memorandum of appeal seeks to elaborate the grounds upon which the Appellant challenges the judgment of the Trial Court. These amendments are necessary to lay a cogent factual basis of the Appeal and properly guide the court on the issues in contention as it relooks at the Trial Court's judgment. The proposed amendments raise issues of fact and law, specifically on the interpretation on Section 31 of the *Employment Act* on house allowance, Section 49 of the *Employment Act* on the basis for a maximum award of compensation.
  21. It was further submitted that the amended memorandum of appeal further seeks to add a point of law on statutory limitations for filing of employment claims which are governed by Section 90 of the *Employment Act*. This goes to the substance and root of the judgment delivered by the Trial Court. If a question relates to limitation of actions, such a point of law can be raised at any time and it need not have been raised and canvassed before the Trial Court.
  22. That the Respondent cannot be prejudiced when a fundamental point of law is to be argued during the appeal. The judgment of any court must be based on law and the intended ground of appeal raises an issue of law that is central to the validity of the judgment delivered by the Trial Court. Counsel relied on among other case the Court of Appeal decision in the case of Nathan Muhatia Pala t/a Muhatia Pala Auctioneers & another v Joseph Nyaga Karingi [2013] KECA 200 (KLR) on this assertion.
  23. It was submitted that the proposed amendments are founded on the facts and evidence produced at the trial court and referred to in the judgment. The amendments merely extrapolate the grounds upon which the Appellant challenges the Trial Court's application of the law to the facts and evidence. The Respondent will not be prejudiced if the amendments are allowed as the appeal is yet to be heard and the parties will have the opportunity to make arguments on the same.

### **Respondent's Submissions.**

24. The Respondent through his advocates Nikita Otinga & Associates Advocates filed written submissions dated 8<sup>th</sup> December, 2025 and on the issue of whether this court has powers to grant leave to produce additional evidence on appeal counsel submitted that the Applicant's motion is premised on Rules 16, 45 and 47 of the Employment and Labour Relations Court (Procedure) Rules, 2024 and Article 159 of *the Constitution* of Kenya. None of the cited provisions empowers this court to grant leave to adduce additional evidence on appeal. This court therefore, sitting as an appellate court, has no jurisdiction to grant leave to adduce additional evidence on appeal.
25. Counsel submitted without prejudice to the denial of the court's jurisdiction, in the event that the court holds that it has the power to grant leave to adduce additional evidence, then it is bound by the decision of the Court of Appeal in Gachuki & Another -vs- Njenga & 2 Others (Civil Appeal (Application) 413 of 2019) [2025] KECA 451 (KLR), where the court, acting pursuant to Rule 31(1) of the Court of Appeal Rules, 2022, cited the Supreme Court Case of Mohamed Abdi Mahamud -vs-



Ahmed Abdullahi Mohammad & 3 Others [2018] eKLR, where the Supreme Court laid down the guidelines for admission of additional evidence before appellate courts.

26. On the issue of whether the applicant has met the threshold for granting of leave to produce additional evidence on appeal counsel submitted that the Applicant seeks to produce employee handbook, attendance register and forms as proof of part payment of overtime for hours worked on Saturdays (the documents). That by the nature of the parties' previous relationship (employer – employee), the Applicant was the custodian of the documents. Since it has not been alleged otherwise, the documents were always in the custody of the Applicant during the trial of the suit.
27. That it was the Applicant's duty to produce the documents during the trial. The attempt to apportion this duty on an advocate is escapist. A litigant has a duty to pursue the prosecution or defence of his or her case. The Applicant has not shown that the documents could not have obtained with reasonable diligence for use at the trial, and that the documents were not within its knowledge, or could not have been produced at the time of the suit. This condition has not been met.
28. Counsel relied on the Court of Appeal case in *Kenyan Marine & Fisheries Research Institute - vs- Okemwa (Civil Appeal (Application) 109 of 2019) [2022] KECA 990 (KLR)* where the court dismissed a similar application for failure to meet the same condition.
29. On the Employee handbook it was submitted that the Applicant states that the alleged Employee handbook contains provisions on consolidation of house allowance with the basic pay and compensation for overtime. That the existence of a written employment contract between the parties herein is admitted. It is also admitted that Clause 6 of the said contract provided for payment of a monthly basic salary of Kshs. 35,000/-
30. That the Applicant implies that the alleged handbook also named 'HR Policy 2017' was contractual in nature with the capacity to vary express employment terms entered into on 06/01/2014 (at the commencement of employment). That the credibility of this handbook is questionable. The handbook is not authenticated, not signed and/or approved and its date of publication and coming into effect is unknown. The alleged handbook has no evidential value.
31. Further, counsel submitted that the alleged handbook allows the Respondent to unilaterally, with or without notice, vary its provisions. That the alleged handbook was not contractual with the effect of varying express terms of a written employment contract.
32. It was submitted that despite its allegations, the Applicant has not demonstrated that the Respondent had knowledge of the said handbook while in employment. Failure to discharge that duty offends the provisions of Section 13 of the *Employment Act*, which requires the employer to supply the employee with statement of changes, whenever there are material changes in the terms and conditions of service. The admissibility of the alleged handbook is highly disputed.
33. Counsel relied on the Court of Appeal case of *Mainkam Limited & Another -vs- Multichoice Kenya Limited (Civil Appeal (Application) 49 of 2020) [2025] KECA 1596 (KLR)* where the court found the documents not having any evidential burden. Counsel also relied on the case of *Banking Insurance & Finance Union [Kenya] -vs- Access Bank PLC [Kenya] Limited (Cause E679 of 2021) [2024] KEELRC 2124 (KLR)*, where the court held that the employee should be shown to have received and acknowledged the Human Resource Policy and signed to be bound by the same.
34. On the Attendance registers and accurate computation of overtime it was submitted that the Applicant alleges that the attendance registers contain accurate computation of overtime hours worked by the Respondent on Saturdays. That the court does not need additional evidence to give a proper and accurate computation of overtime. The Applicant has admitted to filing of attendance registers at the



trail court. The said attendance registers are for the period 2014, 2016, 2017, 2018 and 2019 and are contained in Applicant's Supplementary List of Documents dated 20/01/2021. That the accuracy of the said attendance registers has not been questioned. The Applicant has not demonstrated that this court will not be able to give an accurate computation of overtime based on the evidence already before it, so as to require additional evidence.

35. On Claim Forms and Proof of part Payment of overtime it was submitted that the Applicant alleges that the Respondent received part payment of overtime which he did not disclose, and for that reason, seeks to adduce what it calls 'overtime claim forms and proof of part payment of overtime worked on Saturdays'. That the document referred to is a petty cash voucher dated 30/03/2015 with a payment of Kshs. 500/- in favour of the Respondent for what is clearly described as 'Lunch weekend'.
36. Counsel submitted that the documents are clearly described as 'Meal Claim Forms' with a standard daily rate of Kshs. 500/-. The Respondent has not made any claim for meal allowance and as such the addition of these documents will be of no evidential value to the appeal.
37. On inordinate delay counsel submitted that the appeal herein was filed by the Applicant in the year 2021 at the Civil Appeal Division and transferred and registered to this Division on 17/06/2022. This application was filed on 04/08/2025. It took the Applicant over three years to file the application. An application to adduce additional evidence on appeal is not dependent on availability of typed proceedings. This delay is inordinate.
38. Counsel submitted that the Respondent who has been made to wait for over three years for determination of the appeal stands to be further prejudiced if the application is allowed. The Respondent has a right to expeditious hearing and disposal of the appeal. A delay of ten months was held to be inordinate in the Court of Appeal case of Mainkam Limited & Another (supra).

### **Determination**

39. The court has reviewed the application by the Appellant, the replying affidavit by the Respondent and the submissions by both parties. The main issues for determination in this ruling are:-
  - a. Whether the Appellant has met the conditions for grant of leave to produce additional documents
  - b. Whether the Appellant should be granted leave to amend its Memorandum of Appeal.

### **Whether the Appellant has met the conditions for grant of leave to produce additional documents**

40. The court appreciates that the Employment and Labour Relations Court Procedure Rules do not address the issue of production of additional evidence at appeal stage. The Court will therefore revert to the Civil Procedure Act and the Rules on this issue. Section 78(1)(d) of the Civil Procedure Act empowers the appellate court to take additional evidence or to require the evidence to be taken.
41. Further, Order 42 Rule 27 of the Civil Procedure Rules 2010 provides as follows:
  - (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the court to which the appeal is preferred; but if— (a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; or (b) the court to which the appeal is preferred requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the court to which the appeal is preferred may allow such evidence or document to be produced, or witness to be examined.



- (2) Wherever additional evidence is allowed to be produced by the court to which the appeal is preferred the court shall record the reason for its admission.
42. This therefore means additional evidence at appeal stage is admitted in special circumstances and the reason has to be recorded. The Supreme court set out the guiding principles for the grant of the production of additional documents at appeal stage in the case of Mahamud v Mohamad & 3 others (Petition 7 & 9 of 2018 (Consolidated) [2018] KESC 62 (KLR) (28 September 2018) (Ruling) as follows:
- i. Discovery of new and important matters of evidence which, after the exercise of due diligence, was not within the knowledge of, or could not have been produced at the time of the suit or petition by, the party seeking to adduce the additional evidence;
  - ii. It must be evidence relevant to the issues;
  - iii. It must be evidence which is credible in the sense that it is capable of belief;
  - iv. The evidence must be such that, if given, it would probably have influence on the result of the case, although it need not be decisive;
  - v. The affidavit in support of an Application to admit additional evidence should have attached to it, proof of the evidence sought to be given;
  - vi. The Application to admit additional evidence must be brought without undue delay.
43. The Court went on and held that:-
- These have remained the stand taken by the courts, for obvious reasons that there would be no end to litigation unless a court can expect a party to put its full case before the court. We must stress that for the same reason, courts should be even more stringent to allow a party to adduce additional evidence to re-open a case, which has already been completed on appeal.
44. On the first condition that the additional documents must be new or the ones the applicant could not reasonably produce at trial the Appellant apportioned blame on its advocates on record and that the same was discovered by their new advocates.
45. The court maintains that even when a litigant is represented by an advocate the primary duty to prosecute or defend their case lies on the litigant. Not all blunders are apportioned to the advocates. The court is guided by the case of Habo Agencies Limited -v- Wilfred Odhiambo Musingo (2015) eKLR where the court stated that;
- it is not enough for a party in litigation to simply blame the Advocate on record for all manner of transgressions in the conduct of litigation.
46. In addition, the Appellant was the custodian of all employment records as per section 74 of the *Employment Act* hence it had the possession of the documents. The Appellant also had knowledge of the same documents. It was not clear why the same were not produced at the trial court. It was not clear why the Appellant never furnished the same to their advocates.
47. The Appellant is also relying on the employee handbook to allege that the same would alter employment contract entered by the parties in order to allege that the Respondent was not entitled to overtime and house allowance. The court notes that an employer can only alter terms of contract with the consent of the employee as per section 13 of the *Employment Act*. The Handbook sought to do



away with house allowance stating that the contractual salary was consolidated and that the overtime was allowed by the policy against the employment contract.

48. In addition, the credibility of the said handbook was disputed since the same was never brought to the attention of the Respondent and he acknowledged its applicability. The same was not signed or its publication and its effective date clear. The attendance registers which were to be used for computation of overtime were also not new evidence as the same were already filed at the trial court and the court would use the same in its computation.
49. The proof of payment of overtime and claim forms was also challenged since the produced forms were petty cash vouchers as lunch and meal claim forms of Kshs 500/= yet no claim was made for meal allowance. The same were not overtime payments. It was clear the same would not influence the trial court judgment either.
50. On the issue of inordinate delay the court notes that the Appeal was filed in 2021 at the High Court and transferred to this court in June 2022 and this application made in August 2025. This is three years after it come to this court and four years after the appeal was filed. In all circumstances, if the new advocates realized the additional documents while filing the appeal the same did not need to wait for typed proceedings to be filed. The delay was inordinate.
51. The Appellant seems to have had an afterthought to seal the omissions made at the trial court and this brings fresh evidence which ought to have been brought at the trial court. The Appellant has therefore not met the conditions for grant of leave to produce additional documents at this appeal stage as per the supreme court principles. The court is careful not to re-open the case at appeal stage as observed by the supreme court.

#### **Whether the Appellant should be granted leave to amend its Memorandum of Appeal.**

52. Rule 16 of the Employment and Labour Relations Court Procedure Rules (2024) provides that;

The appellant may, with the leave of the Court, file and serve a supplementary memorandum of appeal or a supplementary record of memorandum and record of appeal.

53. Rule 34 of the above Rules provides as follows: -

A party may amend pleadings before service or before the close of pleadings:

Provided that after the close of pleadings, the party may only amend pleadings with the leave of the Court on oral or formal application, and, the other party shall have a corresponding, right to amend its pleadings.

54. This court is guided by the principles under which the court may grant leave to amend pleadings as was held by A.B. Shah JA Court of Appeal Judge set out in the case of Joseph Ochieng & 2 Others v First National Bank of Chicago (1995) eKLR.
  - a) the power of the court to allow amendments is intended to determine the true substantive merits of the case;
  - b) the amendments should be timeously applied for;
  - c) power to amend can be exercised by the court at any stage of the proceedings (including appeals stage);



- d) that as a general rule, however late the amendment is sought to be made, it should be allowed if made in good faith provided costs can compensate the other side;
  - e) the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitations Act but subject however to powers of the court to still allow an amendment notwithstanding the expiry of current period of limitation.
  - f) that the Court has powers even (in special circumstances) to allow an amendment adding or substituting a new cause of action in respect of which relief has already been claimed in the action by the party applying for leave to seek the amendment.”
55. The court is therefore of the opinion that an amendment can be done at any time of the proceedings including at appeal stage as was held in the case of *Central Kenya Ltd v Trust Bank Ltd & 5 others* [2000] eKLR, where the Court of Appeal stated as follows:
- “... Accordingly, all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment ... does not result in prejudice or injustice to the other party which cannot properly be compensated for in costs ... Neither the length of ... proposed amendments nor mere delay (are) sufficient grounds for declining leave to amend. The overriding consideration (are) whether the amendments (are) necessary for the determination of the suit and whether the delay is likely to prejudice the opposing party compensation in costs.
56. The purpose of a trial court is to create an even playing ground for parties to ventilate their issues. Article 50 (1) of *the Constitution*, 2010 provides for a fair trial. Each party should be given a chance to present and defend its case fairly. Courts and the rules governing them should not be geared towards impeding fair trial but should be enablers of fair trial.
57. The Appellant alleged that the amendments raises issues of facts and law most specifically on section 31 of the *Employment Act* on house allowance and section 49 of the act on maximum compensation. That the same seeks to invoke section 90 of the Act on limitation of time. Whereas the court has found that the Appellant approached the court with inordinate delay the above precedents state that however the delay the main consideration is whether the same have been brought in good faith, are necessary to assist the court determine the issue and the other party will not be prejudiced.
58. The court notes that the delay in hearing and determining this appeal can be compensated by award of costs to the Respondent and coupled with the interest of having each party heard as seen above by *the Constitution* the court gives the Appellant a chance to amend the Memorandum of Appeal so that all issues could be ventilated on merit. This is coupled with the fact that the appeal has not yet been heard and the Respondent will have a chance to respond to the issues raised. The Appellant has met the conditions to amend its Memorandum of Appeal.
59. In conclusion the Appellant’s Application dated 4<sup>th</sup> August, 2025 is allowed on the issue of leave to amend the memorandum of appeal as proposed but disallowed on the issue of introducing new evidence on appeal.
60. The Appellant to file and serve the Amended Memorandum of Appeal in 21 days of this ruling.
61. Costs to abide the outcome of the appeal.
62. It is so ordered.



**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MARCH 2026**  
**DELIVERED VIRTUALLY THIS 13<sup>TH</sup> DAY OF MARCH 2026**  
**ABUODHA NELSON JORUM**  
**PRESIDING JUDGE-APPEALS DIVISION**

