



Mburu & 50 others v Ndung'u & 9 others; Kinuthia & another (Interested Parties) (Civil Appeal (Application) E079 of 2022) [2026] KECA 504 (KLR) (13 March 2026) (Ruling)

Neutral citation: [2026] KECA 504 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) E079 OF 2022**

**JKK KIGEN, JA
MARCH 13, 2026**

BETWEEN

STEPHEN NDUNG'U MBURU & 50 OTHERS APPELLANT

AND

NELSON NDUNG'U 1ST RESPONDENT

PAUL MAINA 2ND RESPONDENT

FREDLICK WAINAINA NJOROGE 3RD RESPONDENT

PETERSON NDUNG'U 4TH RESPONDENT

TERESIAH NYAMBURA 5TH RESPONDENT

PUNDAMILIA FARMERS CO-OPERATIVE SOCIETY LTD. 6TH RESPONDENT

AND

FRANCIS KAMAU MUGO 1ST INTERESTED PARTY

GEORGE GITHUA KINUTHIA 2ND INTERESTED PARTY

VERONICA NJICA NDUNGU 3RD INTERESTED PARTY

JAMES KAMAU MUNGAI 4TH INTERESTED PARTY

AND

FRANCIS KAMAU MUGO.....1ST INTERESTED PARTY

GEORGE GITHUA KINUTHIA INTERESTED PARTY

JAMES KAMAU MUNGAI INTERESTED PARTY



RULING

1. This is an application by the appellant under Rule 31, Court of Appeal Rules. The application seeks orders that (a) leave be granted to amend the memorandum of appeal filed (b) that a supplementary record of appeal dated 21st November 2022, be deemed properly filed.
2. The Rule 31 invoked relates to the court’s power to re-appraise evidence and to take additional evidence. Rule31(5) states that “Each party to the appeal shall be entitled to be present when additional evidence is taken”
3. The said Rule 31 does not appear to support the application.
The entirety of the motion herein has nothing to do with reappraising or adducing additional evidence.
4. The substance of the application is a request to amend the memorandum of appeal to incorporate the Interested Parties who participated at the superior and who are said to have been inadvertently left out, according to the supporting affidavit sworn by the appellant’s advocate in support of the application at hand.
5. The details shown in the grounds of the motion, the supporting affidavit and submissions from intended Interested Parties are that the said 66 Interested Parties, represented by four (4) of them, are members of Pundamilia Co-operative Society who were allocated and have been using parcels of land in issue in the appeal, since 1997.
6. In the submissions, the Interested Parties do not oppose the application.
7. In the interest of justice, I am inclined to allow the application on the premise that the amendment will prejudice no party. That having all parties present and being heard enhances a better prospect of an exhaustive consideration and determination of the issues on trial between the parties.
8. In allowing the application, I rely on the provisions of Article 159[2][d], I also invoke Rule 16 and 46 of the Court of Appeal Rules allowing for amendments as read with Rule 55.
9. As a result, I allow the application as prayed for. The amended Memorandum of Appeal, and the supplementary Record of Appeal to be served within 14 days
10. Costs are to be in the appeal.

DATED AND DELIVERED AT NYERI THIS 13TH DAY OF MARCH, 2026 KATWA KIGEN K. J.

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

