

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: NDERI, JA (IN CHAMBERS))**

**CIVIL APPEAL (APPLICATION) NO. E998 OF 2024**

**BETWEEN**

**NANCHANG FOREIGN ENGINEERING  
COMPANY (KENYA).....APPELLANT/APPLICANT**

**AND**

**STRAIGHT SECURITY LIMITED.....RESPONDENT**

*(Being an application for leave to amend the memorandum of appeal  
dated 6<sup>th</sup> September 2024 and upon grant of such leave the amended  
memorandum be deemed as duly filed*

**in**

**Civil Appeal No. E998 of 2024)**

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**RULING**

1. The appellant has moved this Court by way of a Notice of Motion dated 24<sup>th</sup> June 2025 brought under Rule 44 of the Court of Appeal Rules, 2022. In that application, the appellant sought leave to amend its Memorandum of Appeal dated 6<sup>th</sup> September 2024.
2. The specific amendment sought is to introduce a ground that both the High Court and the Magistrate's Court erred in law and fact by

failing

to recognize, give credit for, and offset the sum of Kes. 232,491/- paid by the appellant in partial settlement of the debt owing, which omission unjustly inflated the quantum awarded against the appellant.

3. The Motion is premised on several grounds, namely: that the Memorandum of Appeal as filed is bereft of a fundamental ground regarding the failure of the two courts below to recognize and offset the sum of Kes. 232,491/- paid in partial settlement; that the omission would deny this Court the opportunity to pronounce itself on the issue thereby prejudicing the appellant; that the appellant had already filed a record of appeal and directions had been issued on its disposal; that the amendment is necessary in the interests of justice to enable the Court to settle all issues in controversy; and that the respondent would not be prejudiced since it had not yet filed submissions to the appeal.
4. The application is supported by the affidavit of Ding Jianghua, sworn on 24<sup>th</sup> June 2025. In that affidavit, the deponent, a Director of the appellant, deposes that he is competent and authorized to swear the affidavit on behalf of the appellant and reiterates the grounds on which the application is premised set out herein before.
5. The deponent further relies on the authority of **George Gikubu Mbutia v Consolidated Bank of Kenya Ltd & Another [2016]**

*eKLR*, where this Court held that parties have the right to amend pleadings

- at any stage of proceedings before judgment and that courts should liberally allow such amendments.
6. The appellant also filed written submissions dated 16<sup>th</sup> July 2025 in support of the application. In those submissions, counsel reiterated that the omission was inadvertent and not deliberate, that the amendment was central to the resolution of the appeal, and that the respondent will suffer no prejudice.
  7. Counsel relied on the case of ***Eastern Bakery v Castelino [1958] EA 461***, where it was held that amendments before hearing should be freely allowed if they can be made without injustice, and on ***Kenya Hotels Limited v Oriental Commercial Bank Limited [2018] eKLR***, where the Court emphasized that amendments introducing grounds properly founded on evidence already adduced and canvassed before the trial court should be allowed.
  8. Despite service of the application and submissions, the respondent did not file any response.
  9. From the foregoing, the facts of the application are clear: the appellant seeks leave to amend its Memorandum of Appeal to include the specific ground relating to the setoff of Kes. 232,491/- already paid.
  10. The principles guiding applications for amendment of pleadings are well settled. In ***Eastern Bakery v Castelino [1958] EA 461***, Sir

*Kenneth O'Connor, P.*, stated that amendments sought before hearing should be freely allowed if they can be made without injustice to the other side, and that injustice cannot be claimed if it can be compensated by costs. He cautioned, however, that amendments should not be permitted where they would substitute one distinct cause of action for another, change the subject matter of the suit, or prejudice accrued rights such as limitation.

11. Similarly, in ***Central Bank of Kenya Ltd v Trust Bank Ltd & Others, Civil Appeal No. 222 of 1998***, this Court reiterated that the guiding principle is that all amendments should be freely allowed at any stage of proceedings provided they do not result in prejudice or injustice to the other party which cannot be compensated by costs.
12. Applying these principles to the present application, the appellant seeks to amend its Memorandum of Appeal to include a ground relating to the setoff of Kes. 232,491/- already paid in partial settlement of the debt. This amendment does not introduce a new cause of action, nor does it alter the subject matter of the appeal. It merely seeks to ensure that the Court pronounces itself on a material issue that directly affects the quantum of the judgment.
13. The omission appears inadvertent, and the amendment is necessary to enable the Court to determine the real question in

controversy.

14. The respondent has not opposed the application, and no prejudice has been demonstrated. Even if prejudice were to arise, it could be compensated by way of costs. The authorities cited by the appellant— ***George Gikubu Mbutia v Consolidated Bank of Kenya Ltd & Another* [2016] eKLR, *Kenya Hotels Limited v Oriental Commercial Bank Limited* [2018] eKLR, and *Ochieng & Others v Ochieng & Another* [2000] eKLR**, all underscore the Court’s duty to allow amendments that facilitate the full resolution of disputes, provided they do not cause injustice.
15. Guided by Rule 44 of the Court of Appeal Rules, 2022, and the jurisprudence **in *Eastern Bakery v Castelino, Central Bank of Kenya v Trust Bank Ltd***, and other authorities, I find that the appellant has made out a proper case for amendment. The amendment is necessary for the just determination of the appeal, will not prejudice the respondent, and is consistent with the principles of substantive justice.
16. Accordingly, the appellant’s Notice of Motion dated 24<sup>th</sup> June 2025 is hereby allowed. The appellant is granted leave to amend its Memorandum of Appeal dated 6<sup>th</sup> September 2024 in terms of the draft annexed to the application. The amended Memorandum of Appeal shall

be filed and served within seven (7) days from the date hereof, and costs of the application shall abide the outcome of the appeal.

**Dated and delivered at Nairobi this 13<sup>th</sup> day of March 2026.**

**NDUMA NDERI**

.....

**..... JUDGE OF  
APPEAL**

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

***Signed***

**DEPUTY REGISTRAR.**

