

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
APPEAL NUMBER E037 OF 2023**

BETWEEN

GUMPLY LIMITEDAPPELLANT

AND

STEPHEN OKOTH OKUMURESPONDENT

RULING

1. Through the application dated 19th August 2025 [not 2026 as indicated in the submissions filed by the Appellant dated 4th February 2026], the Appellant seeks leave, to amend its Memorandum of Appeal.
2. The application is supported by the affidavit of Appellant’s Counsel, Kiingati Ndirangu, sworn on 19th August 2025.
3. The Appellant invokes Rule 14[6] of the E&LRC [Procedure] Rules, 2016. The application was filed in August 2025, and the applicable Rules, are the E&LRC [Procedure] Rules, 2024.
4. It is opposed, through the replying affidavit of the Respondent, sworn on 8th December 2025, and grounds of opposition of even date.
5. Parties agreed to have the application considered and determined on the strength of their affidavits and submissions. They confirmed filing and

exchange of submissions at the last appearance before the Court, on 18th February 2026.

6. The Appellant submits that amendment is necessary, for the fair and just determination of the issues in dispute. Relying on the Court of Appeal decision in **Uhuru Highway Development Limited v. Central Bank of Kenya & 7 Others [2002] KECA 219 [KLR]**, the Appellant submits that a Memorandum of Appeal is not a primary document under Rule 85[1] [a] to [k] of the Court of Appeal Rules. It can always be amended, subject to the interest of justice.
7. The Respondent submits that the above decision held that amendment will be refused, if it is intended to introduce a new case, which was not raised on trial. The Appellant is attempting to litigate its case afresh, through amendment.

The Court Finds: -

8. Rule 85 of the Court of Appeal Rules, is inapplicable to this Appeal.
9. Appeals before the E&LRC are governed by Part 111 of the E&LRC [Procedure] Rules, 2024.
10. Rules 11 and 15 of the above Rules, identifies a Memorandum of Appeal, as a primary document.

11. The decision of the Court of Appeal invoked by the Parties, is not relevant to this Appeal, or Appeals filed before this Court in general.
12. The whole of Part 111, which consists Rule 11 to 22, does not have provision for amendment of the Memorandum of Appeal.
13. Rule 34 governs amendment of pleadings. 'Pleadings,' under Rule 2 on interpretation, includes statement of claim, application, petition, judicial review application, statement of response and counterclaim. 'Appeal' means an appeal to the Court made by any party against an award, order, decision of the Registrar of Trade Unions, Cabinet Secretary, Director OSH, Subordinate Court, Local Tribunal or Commission, or any other body as may be prescribed by any written law, and includes a cross-appeal.
14. Amendment of pleadings under Rule 34, cannot therefore be extended to amendment of appeals.
15. In the view of the Court, an Appellant can only seek leave under Rule 16, which allows the Appellant, with the leave of the Court, to file a supplementary Memorandum of Appeal, or a Supplementary Record of Appeal.
16. Once such a Supplementary Memorandum of Appeal is filed, the Appellant can opt to abandon unneeded grounds of appeal on submissions, and retain only the necessary grounds, from the original and the supplementary Memorandum of Appeal.

17. The Court does not think that the Respondent is in any way prejudiced by the filing of a Supplementary Memorandum of Appeal.
18. If the Supplementary contains grounds that were not subject of the trial, the Respondent shall have adequate opportunity to submit to that effect, and the Court shall review the evidence from the Record, which is not affected by whatever the Appellant may introduce, through the supplementary Memorandum of Appeal.

IT IS ORDERED: -

- a. ***The Appellant is granted 14 days to file and serve a Supplementary Memorandum of Appeal and Final Submissions.***
- b. ***The Respondent shall file and serve his Final Submissions within 14 days of service.***
- c. ***Mention on 30th April 2026 with a view to issuing a date for Judgment.***
- d. ***No order on the costs.***

Dated, signed and delivered electronically at Nakuru, under Rule 68[5] of the E&LRC [Procedure] Rules, 2024, this 31st day of March 2026.

James Rika
Judge

