

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

PETITION NO. E035 OF 2024

HUMPHREY JARED ODHIAMBO.....PETITIONER

VERSUS

HONDA MOTOR CYCLE KENYA LIMITED.....RESPONDENT

RULING

The Applicant filed notice of motion dated 29/1/2025 seeking leave to amend the existing petition and convert it into an ordinary claim. The amendment is brought in terms of Article 159(2) of the Constitution of Kenya 2010 and sections 1A, 1B and 3A of Civil Procedure Rules (CPR) together with Order 8 Rule 3 of the CPR.

The proposed amendment is said to be necessary to allow real questions in contention to be determined and no prejudice other than costs will be occasioned the Respondent by the said amendment.

A draft amended petition converted to a Memorandum of Claim is attached to the notice of motion.

The application is opposed vide replying affidavit of Eric Ngugi, the administrative manager of the Respondent stating that instead of amending the petition same may be heard by viva voce evidence.

That the petition and intended claim are distinct and one cannot be converted to another when different law and rules of procedure apply to both.

That the application offends the principles for pleadings and same is misconceived and an abuse of court process.

The Respondent states that the Petitioner has failed to prosecute the petition for over 12 months and this application is a ruse meant to avoid the dismissal for non-prosecution sought by the Respondent vide the application dated 15/5/2025

DETERMINATION

The petition had not been responded to by the Respondent as at the time of filing this application despite Rule 15(2) of the Mutunga Rules which oblige a Respondent to enter appearance and file a replying affidavit or file statement setting out grounds relied upon to oppose the petition within 7 days of service.

In terms of Rules 18 of Mutunga Rules, A party that wishes to amend its pleadings at any stage of the proceedings may do so with the leave of the court.

The provisions of CPR are not applicable with respect to constitutional petitions and as a general rule, pleadings that have not been responded to

may be amended without leave of the court in terms of Order 8 Rule (1) CPR which reads,

“(1) A party may without leave of the court amend any of his pleadings once at any time before the pleadings are closed.”

Even if the CPR was applicable to the sought amendment, because the Applicant seeks to transform the petition to a Memorandum of Claim, no leave of the court is required, this being the first amendment sought and pleadings have not closed, the Respondent having not filed a replying affidavit to the petition.

The court has considered the amended draft, the same having been properly converted into a Memorandum of Claim. The court deems the amendment proper and grants leave for the amended draft to be deemed as duly filed provided proper fees is paid.

The claim to be given a proper number by the Deputy Registrar of the court and the claim together with summons to enter appearance be served on the Respondent to file a statement of response and the matter to take its normal course.

Dated at Nairobi this **16th day of March 2026**



Mathews Nduma

JUDGE

**Dated, signed and delivered in open court at Nairobi this 9th day of
April 2026**

Dr. Jacob Gakeri
JUDGE

In presence of:

Tonge Yoya & Associates Advocates for the Petitioner

Mr. Ndolo for 1st Respondent

Mr. Kemboi – Court Assistant