



**Gatheri & another v Kariuki & 27 others (Civil Appeal (Application)
8 of 2014) [2026] KECA 864 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KECA 864 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 8 OF 2014**

P NYAMWEYA, JA

APRIL 30, 2026

BETWEEN

NDOROGO GATHERI 1ST APPELLANT

GATUNDU & MANGU FARM COMPANY LIMITED 2ND APPELLANT

AND

**NORMAN KARIUKI & 27 OTHERS & 27 OTHERS & 27
OTHERS RESPONDENT**

RULING

1. This Court (Asike-Makhandia, Ouko (as he then was) and M'Inoti, JJ.A) delivered a judgment in this appeal on 30th June, 2017, in which it set aside the decision of the trial court that had awarded seven (7) acres of the suit land to the Respondents herein on account of adverse possession, while at the same time making a finding that the suit land did not belong to the 2nd appellant and belonged to the Government. The 2nd appellant subsequently filed an application dated 28th October 2024 seeking to review the said judgment which is pending hearing.

The 2nd appellant has now filed another application dated 17th December 2025 that is the subject of this ruling, seeking leave to amend the application dated 28th October 2024, and that the draft amended Notice of Motion application annexed thereto be deemed as dully filed upon payment of requisite court fees. The main ground for the application is that there are new intervening processes and sufficient reasons to warrant the review and setting aside the said judgment, and which will alter the outcome of this case. Further, that the said amendment will grant an opportunity to seek clarity on some statements made in the judgment delivered by this Court

2. The 2nd appellants' advocates on record, Gachie Mwanza & Company filed submissions dated 3rd February 2026 in which these grounds were reiterated; reliance was placed on the provisions of the of Rule 46 (1) and (2) of the Court of Appeal Rules, 2022 that gives the Court powers to grant



leave to an applicant to amend any document; and reference made to the text in Halsbury's Laws of England, 4th Ed. (re-issue), Vol. 36(1) at paragraph 76 on the amendments of pleadings and the purpose of the amendment. Also cited in this respect were the decisions of this Court in *Kenya Hotels Limited v Oriental Commercial Bank Limited* [2018] eKLR and *Nathan Muhatia Pala t/a Muhatia Pala Auctioneers & Another v Joseph Nyaga Karingi* (2013) eKLR,

3. The said advocates asserted that in making the amendment, the applicant does not seek to introduce any new cause of action that would ultimately prejudice the respondents in any way, but seeks to assist the court render a just decision with finality and on merit. In addition, that the proposed amendment is made in good faith, the same has been brought without unreasonable delay and without any prejudice to the respondents as it does not seek to introduce any new cause of action or fresh orders, and rather it seeks clarity on statements made on record in the final judgment.
4. The application was opposed by way of a replying affidavit sworn on 3rd February 2026 by Monica Wanza Wambua, the 9th respondent herein. The said respondent detailed the actions and processes undertaken by the respondents and the National Land Commission to regularise their titles to the suit land after delivery of the judgment by this Court, the continued dealings by the applicants with the said land, and consequential rulings delivered by the Environment and Land Court. According to the respondents the prayers and reliefs introduced by the proposed amendment are seemingly in conflict with the original prayers and reliefs sought, and designed to circumvent the stringent requirements relating to filing applications seeking orders of review in a timely manner. Further, that the application constitutes part of the applicant's concerted effort to frustrate and defeat the ongoing regularization process by inundating this court with numerous and frivolous applications.
5. This response was reiterated in submissions filed by Waithaka & Associates, the 9th respondent's advocates, dated 3rd February 2026, and the decision of this Court in *Muchanga Investments Limited v Safaris Unlimited (Africa) Ltd & 2 Others* (2009) eKLR and *George Gikubu Mbuthia v Consolidated Bank of Kenya & Another* (2015) KECA 452 (KLR) were cited in support of the aforesaid averments.
6. I heard the application in chambers in the absence of the parties on 9th February 2026, and have considered the arguments put forth by the applicant and respondent. The principles that apply to an application for amendment of pleadings pursuant to Rules 46 of the Court of Appeal Rules of 2022 and in accordance with the well-known general principles enunciated in *Uhuru Highway Development Ltd v Central Bank of Kenya* (2002)1 EA 314 are that the Court has wide discretion to permit amendments at any stage if they are necessary for determining the real question in controversy and amendment should be allowed liberally unless they introduce entirely new causes of action or cause irreparable injury. This Court has further held in *Kenya Hotels Limited v Oriental Commercial Bank Limited* [2018] eKLR and *John Gakuo & another v County Government of Nairobi & another* [2017] eKLR that allowing amendment of filed documents is discretionary, and can be allowed where the application has been made in good faith and there is no prejudice to the respondent if amendment is allowed.
7. M'Inoti JA detailed the applicable principles in *Kenya Hotels Limited v Oriental Commercial Bank Limited* (supra) as follows:

“Whether or not to allow an amendment will also depend on the nature and extent of the amendment. If the applicant is merely introducing a ground of appeal that is properly founded on the evidence that was adduced and canvassed before the trial court, which it is alleged the trial judge ignored or misapplied, the Court will more readily allow the amendment. Different considerations will however apply if the applicant is seeking to



introduce a totally new ground of appeal that was not pleaded, evidence adduced, canvassed and determined by the trial court. Thus for example, in exercising its discretion in the former type of case involving an amendment that did not entail introduction of an entirely new point, the Court, in *Kanawal Sarjit Singh Dhim v. Keshavji Jivraj Shah* (supra) took into account a number of considerations such as that the dispute involved a prime and valuable property in Nairobi, the judgment the subject of appeal had been obtained ex parte; the need to afford the applicant an opportunity to ventilate all the issues that he wished to raise on appeal; the fact that the intended amendment was not irrelevant to the appeal; and that the respondent stood to suffer no prejudice as he had the opportunity to oppose the appeal. And in *Nathan Muhatia Pala t/a Muhatia Pala Auctioneers & Another v Joseph Nyaga Karingi* [2013] eKLR, the Court also took into account the duty imposed by sections 3A and 3B of the *Appellate Jurisdiction Act* to ensure that justice is dispensed in consonance with the overriding objective so as to realize just, expeditious, proportionate and affordable resolution of disputes.”

8. I have perused the proposed amendments in the instant application. The amendments seek to amplify the prayers sought in the application and detail the grounds for the said prayers. The 9th respondent did not dispute that the proposed amendments do not introduce a new cause of action or raise any new issues or grounds that were not pleaded or canvassed in the judgment sought to be reviewed. The said respondent’s concern appears to be that the prayers and reliefs the 2nd appellant seeks are different from, and in conflict with the prayers in the original application, and that the 2nd appellant is also concurrently seeking an interpretation of the judgment which is an abuse of process. These are concerns that can only be urged during the substantive hearing of the application.
9. To this extent I am persuaded that the proposed amendments to the body of the application dated 28th October 2024 are merited. I am however perplexed that the 2nd appellant has also sought to amend the affidavit that was sworn by Lucy Wanjiru Njonjo and filed in support of the application dated 28th October 2024. An affidavit is amended by filing a supplementary or further affidavit rather than altering the original sworn document, and especially in light of the requirement that each affidavit must be sworn before a commissioner for oaths, and to also ensure clarity and accuracy in legal proceedings.
10. I therefore partially allow the application dated 17th December 2025 to the extent of the following orders:
 - a. Leave be and is hereby granted to the 2nd appellant to amend the Notice of Motion dated 28th October 2024 only, in the terms of the draft annexed to the application. For avoidance of doubt the proposed amendments to the affidavit in support of the Notice of Motion dated 28th October 2024 are declined.
 - b. The 2nd appellant shall file and serve the amended Notice of Motion, together with any further or supplementary affidavits that may be necessary, within 14 days from the date of this ruling.
 - c. The 2nd appellant shall meet the costs of the application dated 17th December 2025.
 1. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL 2026.

P. NYAMWEYA.

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JUDGE OF APPEAL



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

Signed

DEPUTY REGISTRAR.

