



**Njiri & another v Wangui & 2 others (Civil Application
E018 of 2026) [2026] KECA 789 (KLR) (23 April 2026) (Ruling)**

Neutral citation: [2026] KECA 789 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E018 OF 2026**

JM MATIVO, JA

APRIL 23, 2026

BETWEEN

MARY WANJIKU NJIRI & ANOTHER APPLICANT

AND

RUTH MARY WANGUI & 2 OTHERS RESPONDENT

*(Being an application from ruling and order of the Environment and
Land Court of Kenya at Nakuru (J. Mutungi, J.) dated 24th March 2022
in ELC No.12 'B' of 2021 (O.S) Formerly HCCC No.153 of 2012 (O.S)*

RULING

1. Vide an application dated 26th January 2026, the applicants who are acting in person pray for leave to amend their memorandum of appeal dated 7th June 2022 in respect of Nakuru Civil Appeal No. E058 of 2022, Mary Wanjiku Njiri & David Gikonyo Njiri (Suing as the legal representatives/administrators of the estate of the late Wilson Njiri Gikonyo - deceased) vs Ruth Mary Wangui, Deneva Co. Ltd & William Wanjohi Mureithi. The applicants pray that the costs of the application do abide the outcome of the appeal.
2. The grounds upon which the application is founded is that there is a need for the memorandum of appeal to be amended so as to conform with Rule 88 of the Court of Appeal Rules, 2022. In particular, the applicants seek to remove some grounds which are repetitive.
3. On record is a replying affidavit dated 20th February 2026 sworn by William Wanjohi Mureithi, the 3rd respondent essentially urging that the true intend of the amendment is to introduce new matters and fundamentally alter the true character of the appeal. Further, the intended amendments go beyond the scope of mere correction.
4. The applicants filed written submissions dated 27th February 2026 essentially urging the Court to find merit in the amendment sought, exercise its unfettered discretion and allow the application. On the



other hand, the respondents filed submissions contending that the applicants are improperly invoking this Court's amendment jurisdiction.

5. I have considered the rival arguments presented before me and the grounds in support of the amendment. The principal question as I see it is whether the leave sought is merited. Amendments of pleadings are provided for under Rule 46 (1) of the Court of Appeal Rules, 2022 which provides: -

“46. Applications for leave to amend

1. Whenever a formal application is made to the Court for leave to amend any document, the amendment for which leave is sought shall be set out in writing and,
 - a. if practicable, lodged with the Registrar and served on the respondent before the hearing of the application or,
 - b. if that is not practicable, handed to the Court and to the respondent at the time of the hearing.
2. Where the Court gives leave for the amendment of a document, whether on a formal or an informal application, the amendment shall be made or an amended version of the document be lodged within such time as the Court when giving leave may specify and if no time is so specified, then within forty-eight hours of the giving of leave and on failure to comply with the requirements of this sub-rule, the leave so given shall determine.

6. An appropriate introductory point is to emphasize that the principal object of permitting amendment of pleadings is to obtain a proper ventilation of the dispute between the parties, to determine the real issues between them, so that justice may be done. The foregoing should be contrasted with the Court's inclination to disallow the amendment if it is not made in good faith or if it is done with the sole purpose of prejudicing the defendant or in cases where obvious injustice to the other party would result if the amendment is allowed.

7. The decision whether to grant or refuse an application to amend a pleading rests in the discretion of the Court. The Court's approach in dealing with amendment of pleadings has always been that an application for amendment should be allowed unless the application to amend is mala fides or it will prejudice the other party. The realization of justice between the parties is not to be obstructed by a too rigid consideration. The object of pleadings is to define the issues: and parties will be kept strictly to their pleas where any departure would cause prejudice or would prevent full enquiry. But within those limits the Court has a wide discretion. The Court has the greatest latitude in granting amendments, and it is very necessary that it should have because the object of the Court is to do justice between the parties. The foregoing approach was concisely stated in *Cobbold vs. Greenwich LBC* [1999] EWCA Civ 2074 as follows:

“Amendments in general ought to be allowed so that the real dispute between the parties can be adjudicated upon provided that any prejudice to the other party or parties caused by the amendment can be compensated for in costs, and the public interest in the efficient management of justice is not significantly harmed.”

8. In *Ochieng & Others vs. First National Bank of Chicago* Civil Appeal No. 147 of 1991, this Court set out the following principles to guide courts in applications for amendment of pleadings:
- a. the power of the court to allow amendments is intended to determine the true substantive merits of the case;



- b. the amendments should be timeously applied for;
 - c. power to amend can be exercised by the court at any stage of the proceedings;
 - d. that as a general rule however late the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side;
 - e. the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on limitations Act subject however to powers of the court to still allow and amendment notwithstanding the expiry of current period of limitation.
9. The above parameters are not exhaustive. A litigant must be given leave to amend his or her pleading unless it is absolutely clear that the deficiencies of the pleading cannot be cured by the amendment. Determining whether to grant an amendment requires an exercise of judicial discretion. The exercise of that discretion is of course not unfettered. However, decisional law is in agreement that leave shall be freely given when justice so requires. The primary consideration is whether the amendment will have caused the other party prejudice which cannot be compensated by an order for costs or by some or other suitable order.
10. Rule 46 does not state what the Court has to consider before granting an amendment. However, the power donated by Rule 46 (1) to amend any document is a discretionary power, which must be exercised judiciously on the basis of reason rather than arbitrarily and subject to the interests and dictates of justice. (See *Kanawal Sarjit Singh Dhim vs. Keshavji Jivraj Shah* [2010] eKLR) where Bosire, JA stated:
- “The discretion to amend, like all discretions exercisable by the court, however wide or unfettered, must not be based on whim or caprice. It is a judicial process and must therefore be based on reason.”
11. A memorandum of appeal is a document that is rightly amenable to amendment. The principles that guide courts when considering an application for amendment of a pleading are clear and these are that amendments to pleadings sought before hearing should be freely allowed so long as they do not cause injustice to the other side. The predecessor to this Court held in the case of *Eastern Bakery vs. Castelino* [1958] EA 461 as follows: -
- “Amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs.”
12. The main issue is therefore, whether the respondents will suffer prejudice if the amendment sought is allowed. The applicants seek to eliminate what they describe as repetitive grounds so as to ensure that their memorandum of appeal conforms with Rule 88 of this Court’s rules. I find nothing to suggest that the respondents will be prejudiced if the amendment is allowed. Accordingly, the applicants are hereby granted leave to file and serve their amended memorandum of appeal with 14 days from the date of this ruling. I make no orders as to costs.

DATED AND DELIVERED AT NAKURU THIS 23RD DAY OF APRIL 2026.

J. MATIVO



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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

