



**Kamau v Association of Action International & 2 others (Civil Appeal
(Application) E009 of 2020) [2025] KECA 659 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KECA 659 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) E009 OF 2020
PM GACHOKA, JA
APRIL 9, 2025**

BETWEEN

JEAN NJERI KAMAU APPLICANT

AND

ASSOCIATION OF ACTION INTERNATIONAL 1ST RESPONDENT

ACTION AID INTERNATIONAL KENYA BOARD 2ND RESPONDENT

WULLIAM NTOINA 3RD RESPONDENT

(An application for leave to amend the memorandum of appeal from the judgment and decree of the High Court of Kenya at Naivasha (Richard Mwongo, J.) delivered on 5th August 2020 in HCCA NO. 9 OF 2018)

RULING

1. By Notice of Motion dated 12th February 2024, the applicant has invoked the provisions of Article 159 (2) (d) of *the Constitution*, sections 3A and 3B of the *Appellate Jurisdiction Act* and rules 4, 45 and 46 of the Court of Appeal rules seeking for orders:
 1. That the applicant/appellant be granted leave to amend the memorandum of appeal as per the proposed amended memorandum of appeal;
 2. That upon prayer 1 being granted, the annexed memorandum of appeal amended on 12th February 2024 and written submissions dated 12th February 2024 filed herewith be deemed as duly filed and served upon the payment of the requisite court fees;
 3. That the Honourable Court be pleased to grant any other it may deem fit;



4. That costs of this application do abide the results of the Court of Appeal.
2. The application is supported by the grounds on its face and further by the supporting affidavit of the applicant. The facts giving rise to the application are that the applicant was dissatisfied with the findings of the Naivasha High Court in HCCC NO. 9 OF 2018 delivered on 5th August 2020. Flowing from that, the applicant filed her notice of appeal and subsequently her memorandum of appeal. Upon perusal of the memorandum of appeal, the applicant noted several inadvertent mistakes requiring amendment. She annexed her amended memorandum of appeal dated 12th February 2024 exemplifying the mistakes.
3. The applicant stated that the amendments were necessary, proper and substantial to enable the Court arrive at a holistic decision. Furthermore, since the mistakes were committed by her advocate, they ought not to be visited upon her. Finally, in urging this Court to allow the application, the applicant stated that it was in the interest of justice and no prejudice would be suffered by the respondent if the application is allowed.
4. The application was unopposed. It was canvassed by way of written submissions. The applicant in her submissions, case digest and list of authorities all dated 25th March 2025 submitted that the application met the threshold for grant of the orders sought. She urged this Court to allow it as prayed.
5. Rule 46 (1) of the *Court of Appeal Rules* 2022 provides that whenever a formal application is made for leave to amend any document, the amendment shall be set out in writing, lodged with the Registrar and served on the respondent before the hearing of the application or, if not practicable, handed to the Court and to the respondent at the time of the hearing. This Court in *John Mugambi & Mugambi & Company Advocates vs. Kiama Wangai* [2021] KECA 952 (KLR) held as follows:

“It is trite that the power reserved for the Court by rule 44(1) of the Court of Appeal Rules to amend any document is a discretionary power. Like all judicial discretion however, it must be exercised judiciously and upon reason, rather than arbitrarily, on humour, or fancy. (See *Kanawal Sarjit Singh Dhim v Keshavji Jivraj Shah* [2010] eKLR). A memorandum of appeal, such as the one that the applicant seeks to amend is a document that is rightly amenable to amendment. (See *Kenya Hotels Limited v Oriental Commercial Bank Limited* [2018] eKLR).”
6. The applicant has annexed her amended draft memorandum of appeal with the amendments therein. This Court finds no reason why the amendments should not be allowed. Accordingly, I direct the applicant to file its memorandum of appeal amended on 12th February 2024 within seven days from the date of this order failing which the orders granted herein shall automatically lapse without any further reference to this Court. The costs of the application shall abide the outcome of the appeal.

DATED AND DELIVERED AT NAKURU THIS 9TH DAY OF APRIL 2025.

M. GACHOKA C.Arb, FCI Arb.

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

