



**Kenya Nut Limited v Muthoni (Civil Appeal (Application)
61 of 2018) [2025] KECA 656 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KECA 656 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) 61 OF 2018
PM GACHOKA, JA
APRIL 9, 2025**

BETWEEN

KENYA NUT LIMITED APPLICANT

AND

MARY MUTHONI RESPONDENT

(An application for leave to amend the memorandum of appeal from the judgment and decree of the Employment and Labour Relations Court at Nakuru (Stephen Radido, J.) delivered on 8th March 2016 in ELRC NO. 531 OF 2014)

RULING

1. The Notice of Motion dated 26th May 2021 has supplicated the provisions of section 3A and 3B of the [Appellate Jurisdiction Act](#) and rules 44 (1) of the Court of Appeal Rules 2010 (sic) seeking for orders that:
 1. This Honourable Court be pleased to grant the applicant/appellant leave to amend the memorandum of appeal dated 22nd August 2018 against the judgment and decree of the Employment and Labour Relations Court at Nakuru (Hon. Justice Radido Stephen) delivered on 8th March 2016 in Nakuru ELRC Cause no. 531 of 2014 so as to introduce the following ground of appeal:
 - i. That the learned Hon. Judge erred in law and fact by disregarding the certificate of clearance signed by the respondent in which she confirmed that she had no further claims of any nature against the appellant.
 2. The Honourable Court be pleased to make such other or further orders as it deems fit and just;
 3. That costs of the application be in the cause.



2. The application is supported by the grounds on the body of the Motion and the supporting affidavit of Ezekiel Ochieng', the head of legal affairs and industrial relations of the applicant. The gist of the Motion is that by judgment of the ELRC at Nakuru in ELRC Cause no. 531 of 2014 delivered on 8th March 2016, Radido, J. directed the applicant to pay the respondent a total sum of Kshs. 86,655.00 as compensation for unfair termination of employment. The applicant is aggrieved by those findings. It subsequently lodged its memorandum of appeal dated 22nd August 2018 on 24th August 2018. However, the applicant noted that it inadvertently omitted the following ground:

“That the learned Hon. Judge erred in law and fact by disregarding the certificate of clearance signed by the respondent in which she confirmed that she had no further claims of any nature against the appellant.”

3. The applicant prayed that the application be allowed for the following reasons: the intended amendment is necessary to enable this Honourable Court determine all the issues holistically and with finality; there will be no prejudice suffered by the respondent if the orders sought are granted; the respondent will still have the opportunity to challenge the ground when the appeal is heard; the application is filed in good faith and it is in the interests of justice that the orders sought are granted.

4. The application was not opposed. That regardless, the application was disposed of by way of written submissions. The applicant was the only party that filed its written submissions as well as its list and digest of authorities dated 7th November 2022. It submitted that the application was merited and ought to be allowed.

5. I have considered the application, examined the submissions and analyzed the law. The applicant seeks to amend its memorandum of appeal dated 22nd August 2018 and filed on 24th August 2018.

6. 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. Being a discretionary power, it must be exercised judiciously and upon reason, rather than arbitrarily, based on humour, or fancy. (See *Kanawal Sarjit Singh Dhim vs. Keshavji Jivraj Shah* [2010] eKLR).

7. In the same vein, a memorandum of appeal that seeks to amend, as is the case before me, is a document properly amenable to amendment. (See *Kenya Hotels Limited v Oriental Commercial Bank Limited* [2018] eKLR). Looking the ground intended to be included in the amended memorandum of appeal dated 22nd August 2018, this Court finds no reason why the amendment should not be allowed. I am satisfied to hold that no prejudice will be occasioned on the respondent who will respond to the same during the hearing of the appeal. In view of the foregoing, I direct the applicant to amend its memorandum of appeal dated 22nd August 2018 to include the following ground of appeal:

“That the learned Hon. Judge erred in law and fact by disregarding the certificate of clearance signed by the respondent in which she confirmed that she had no further claims of any nature against the appellant.”

8. The applicant shall file the amended memorandum of appeal 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.

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



M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

