



REPUBLIC OF KENYA



KENYA LAW
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**Ntongai v Marete (Legal representative of the Estate of Julius Marete Ibutu- Deceased) & another
(Civil Appeal (Application) E055 of 2021) [2024] KECA 762 (KLR) (21 June 2024) (Ruling)**

Neutral citation: [2024] KECA 762 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) E055 OF 2021
W KARANJA, LK KIMARU & AO MUCHELULE, JJA
JUNE 21, 2024**

BETWEEN

JOSEPH NTONGAI APPLICANT

AND

**PRISCILLA NKIROTE MARETE (LEGAL REPRESENTATIVE OF THE ESTATE
OF JULIUS MARETE IBUTU- DECEASED) 1ST RESPONDENT**

**DISTRICT LAND ADJUDICATION OFFICER - TIGANIA EAST
DISTRICT 2ND RESPONDENT**

(An application for leave of court to amend the memorandum of appeal in the Court of Appeal at Nyeri challenging the judgment/decree of the Environment and Land Court at Meru (L.N. Mbugua, J.) delivered on 30th September 2020 in Meru ELC Misc. J.R. Appl. No. 12 of 2014)

RULING

1. Rule 44(1) of the *Court of Appeal Rules*, 2022 allows for the amendment of a document where leave has been obtained. Whether or not such leave should be granted entails the exercise of this Court's discretion. Like all judicial discretion, the Court is called upon to act judiciously, reasonably and in the best interest of the parties so as to enable the just, expeditious and proportionate determination of all the issues in the appeal. (See *Kenya Hotels Limited v Oriental Commercial Bank Ltd* [2018] eKLR; *Lilian Wanja Muthoni Mbogo t/a Sahara Consultants & 5 Others v Asset Recovery Agency* [2022]KECA 48 (KLR)). It is trite that a memorandum of appeal is rightly amenable to amendment (See *Uhuru Highway Development Ltd v Central Bank of Kenya* [2002] 1EA 314).
2. The applicant, Joseph Ntongai, was aggrieved by the decision by the learned L.N. Mbugua, J. delivered on 30th September 2020 in a land judicial review dispute involving land adjudication in Tigania East District of the Meru County. The learned Judge granted orders of certiorari and prohibition after it was found that the District Land Adjudication Officer (2nd respondent) had handled the objection



unfairly, unreasonably and contrary to the rules of natural justice. This is the decision that aggrieved the applicant and caused him to come before this Court on appeal. He filed a notice of appeal and a record of appeal that contained a memorandum of appeal.

3. By a notice of motion dated 27th September 2021, the applicant seeks leave to amend his memorandum of appeal and be allowed to file and serve a supplementary record of appeal containing the memorandum of appeal upon amendment.
4. In the grounds and supporting affidavit, the applicant stated that he had filed the memorandum of appeal through his counsel then on record. Since then, he has changed counsel and has received advice that he ought to amend the memorandum of appeal to correct the date of judgment, to include the correct respondents, to include the orders sought in the appeal, to include the substantive motion that led to the impugned judgment, the verifying affidavit, and such other details that had been omitted. He has deponed that no prejudice will be suffered by the respondents.
5. The application was served, but did not elicit any response. The respondents did not attend the hearing, although served.
6. It was the submission by learned counsel Mr. Carlpeters Mbaabu for the applicant that the application had satisfied all the requirements necessary for the grant of orders to amend, and that the intended amendment was necessary to enable this Court to determine all the issues raised in the appeal to be able to pronounce itself finally on the merits. It was pointed out that the supporting affidavit had annexed the proposed amended memorandum of appeal.
7. We have considered this notice of motion against Rule 44(1) of the [Court of Appeal Rules](#), 2022 and the decided cases of this Court. We are persuaded that the orders sought are merited. We consequently make the following orders:-
 - a. leave is hereby granted to amend the memorandum of appeal in terms of the amended memorandum of appeal annexed to the motion dated 27th September 2021;
 - b. the applicant is to file and serve the supplementary record of appeal within fourteen (14) days from today; and
 - c. costs of the application shall abide the outcome of the appeal.

DATED AND DELIVERED AT NYERI THIS 21ST DAY OF JUNE 2024.

W. KARANJA

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

A.O. MUCHELULE

.....

JUDGE OF APPEAL

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

Signed



DEPUTY REGISTRAR

