



**Kimari v Mburu & 2 others (Civil Appeal (Application)  
E086 of 2023) [2023] KECA 1158 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KECA 1158 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E086 OF 2023  
S OLE KANTAI, JA  
OCTOBER 6, 2023**

**BETWEEN**

**PETER KAHURA KIMARI ..... APPELLANT**

**AND**

**PETER GIKURA MBURU ..... 1<sup>ST</sup> RESPONDENT**

**NAIROBI CITY COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

*(An appeal from the Ruling and order of the Environment and Land Court of Kenya at Nairobi (Angote.) dated 21st April, 2022 in ELC No. 130 of 2018)*

**RULING**

The applicant Peter Kahura Kimani has by Motion on notice brought under various provisions of law applied in the main that I grant him leave to amend Certificate of Verification, Statement of Address for Service and Memorandum of Appeal, as per draft amended documents; that the draft amended documents be deemed as duly filed upon payment of court filing fees and that costs of the

1. Motion abide the outcome of the appeal. In grounds in support of the Motion and in an affidavit of a lawyer Charlene Ndirangu it is stated inter alia that the applicant filed Record of Appeal containing the said documents sought to be amended; that the documents incorrectly indicated the date of the decision of the High Court as November 4, 2021 instead of the correct date April 21, 2022; that the lawyers noted the said error when preparing written submissions and that the amendments sought are to correct the error in the face of the documents.

I note that parties were served with a hearing notice on September 13, 2023 at 3.01 p.m. requiring them to file written submissions within time specified. I have seen and considered written submissions by the applicant but there are none by the respondents.



The factors to consider in an application of this nature are old hat and were well summarized in a ruling by a single Judge which was confirmed by a full bench in the case of *Leo Sila Mutiso v Rose Wangari Mwangi* Civil Application No. Nai 255 of 1997. In the case of *Maina Johana Miano v Leah Wanyara Gichohi* [2019] eKLR

Koome, JA (as she then was – now Chief Justice) cited the case of

2. *Issa Masudi Mwabumba v Alice Kavenya Mutunga & 4 others* [2012] eKLR and said:

“...The principles to guide the court on the exercise of judicial discretion to extend time or to revive a suit are similar and they have been articulated in a long line of authorities. See the case of *Leo Sila Mutiso vs. Rose*, CA Nai 255 of 1997 (unreported) ... Besides the principles set out in the case of *Leo* (supra), I am also guided by the provisions of Section 3A and 3B of the *Appellate jurisdiction Act* otherwise known as the oxygen principle. Stemming from the overarching objectives in the administration of justice the goal at the end of the day, the court attains justice and fairness in the circumstances of each case. This is the same spirit that is envisaged as the thread that kneads through the Constitution of Kenya, 2010 in Article 159.”

The applicant applies for leave to amend documents that were before the High Court and are known to the respondents. I am told by the applicant that it is only when written submissions for the appeal were being prepared that it was noticed that there were errors in documents including stating the date when the Judgment which has been appealed was made. There is no inordinate delay in bringing the application and I can see no prejudice that could be suffered by the respondents if I grant leave. In the premises I exercise my discretion in favour of the applicant and I allow the Motion dated June 19, 2023. The documents set out at prayer 2 of the Motion

are duly amended as per draft amended documents and are deemed

3. as duly filed subject to payment of appropriate court fees. Costs of the Motion will abide the appeal.

**Dated and Delivered at Nairobi this 6<sup>th</sup> day of October, 2023.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

