



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: KANTAI, JA.)**

**CIVIL APPEAL (APPLICATION) NO. 444 OF 2018**

**BETWEEN**

**JAHANGIR ALAUDIN CHANANDIN.....APPELLANT**

**AND**

**ANJU CHANANDIN.....1ST RESPONDENT**

**DILIP KUMAR PARTEL.....2ND RESPONDENT**

**PIYUSH KUMAR PATEL.....3RD RESPONDENT**

**CHAYABEN PATEL.....4TH RESPONDENT**

**LACHEKA LUBRICANTS LIMITED.....5TH RESPONDENT**

**FEMIDA ALAUDIN CHANANADIN.....6TH RESPONDENT**

*(Being an application to amend the Appellant's Memorandum of Appeal from the Judgment of the*

*High Court of Kenya at Nairobi (L. Kimaru, J.) dated 9th February, 2017 in H.C.C.C. No. 29 of 2005 (O.S.)*

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**RULING**

I am asked in the Motion dated 20th December, 2019 brought under **rules 42, 43 and 104** of the **Rules of this Court** to grant leave to the applicant to rely on grounds of appeal set out in a proposed Amended Memorandum of Appeal instead of the grounds contained in the Memorandum of Appeal dated 6<sup>th</sup> December, 2018. If I grant that prayer, I am asked to order that the proposed Amended Memorandum of Appeal be deemed as duly filed and served on the respondents. In grounds in support of the Motion and in a supporting affidavit of **Naseem Noor Butt**, a shareholder and director of **Lacheke Lubricants Limited** it is said amongst other things that in the course of preparing for the appeal the applicant has discovered that all the real grounds of appeal that the applicant is entitled to rely on are not included in the Memorandum of Appeal dated 6th December, 2018 and that it is the practice of this Court to allow amendment of pleadings if no injustice is occasioned to the other side.

I have not seen any replying affidavit to the Motion.

I have perused the draft Amended Memorandum of Appeal attached to the Motion. Various additional grounds of appeal are set out proposed to be argued in the appeal. The applicant states that in the course of preparing for hearing of the appeal it was found that not all grounds of appeal had been set out in Memorandum of Appeal and the applicant should be allowed to introduce other grounds. I can see no prejudice that would be occasioned to the respondents if this is done and in the premises I allow the prayer to amend Memorandum of Appeal to include the proposed grounds of appeal. Let the applicant file an amended Memorandum of Appeal within 14 days of today and serve the respondents in accordance with the rules of this Court. I make no order as to costs.

**Dated and delivered at Nairobi this 4th day of December, 2020.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**