



REPUBLIC OF KENYA



**Gituma v Lintari & another (Civil Appeal E099 of 2023)  
[2024] KEHC 6405 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6405 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E099 OF 2023  
TW CHERERE, J  
MAY 30, 2024**

**BETWEEN**

**GEORGE MUGAMBI GITUMA ..... APPELLANT**

**AND**

**MUTWIRI JACOB LINTARI ..... 1<sup>ST</sup> RESPONDENT**

**FAITH NTARARA MUKETHA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By notice of motion dated 23<sup>rd</sup> April, 2024, supported by an affidavit sworn by George Mugambi Gituma (Appellant/Applicant) on even date, Applicant seeks leave to amend the memorandum of appeal to include two specific orders that he wishes to seek from the court.
2. Respondents opposed the application by way of a replying affidavit sworn by Mutwiri Jacob Lintari (1<sup>st</sup> Respondent) on 09<sup>th</sup> May, 2024 in which he avers that the Applicant intends to sneak an appeal of the judgment dated 23<sup>rd</sup> February, 2022 yet the appeal as filed is against the ruling dated 14<sup>th</sup> June, 2023.
3. I have considered the application in the light of the affidavits on record and annexures thereto.
4. This court's power to amend the memorandum of appeal is provided for under Order 42 of the *Civil Procedure Rules* which provides as follows:

[Order 42, rule 3.] Amendment of memorandum of appeal.

3.

- (1) The appellant may amend his memorandum of appeal without leave at any time before the court gives directions under rule 13.



- (2) After the time limited by subrule (1) the court may, on application, permit the appellant to amend his memorandum of appeal.
5. Direction in this matter were given on 12<sup>th</sup> July, 2023 but the trial court file is yet to be availed.
  6. The memorandum of appeal dated 26<sup>th</sup> June, 2023 and filed on 29<sup>th</sup> June, 2023 clearly challenges the ruling of the trial court delivered on 14<sup>th</sup> June, 2023.
  7. The appeal is based on grounds that Appellant was denied an opportunity to present his defence.
  8. The orders that the court will finally issue after considering the appeal will certainly arise from the memorandum of appeal and the arguments of the parties. The court does therefore not require any direction on the specific orders it ought to grant in the circumstances of this appeal.
  9. Additionally, the appeal relates to a specific ruling delivered on 14<sup>th</sup> June, 2023 and any attempt to include as part of the appeal any undisclosed judgments is not only mischievous but is an abuse of the court process.
  10. From the foregoing, it is hereby ordered:
    1. The notice of motion dated 23<sup>rd</sup> April, 2024 is without merit and it is disallowed with costs the Respondent.
    2. Mention before the Deputy Registrar on 11<sup>th</sup> July, 2024 to confirm availability of the lower court file

**DELIVERED IN MERU THIS 30<sup>TH</sup> DAY OF May 2024**

**WAMAE.T. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

For Appellant/Applicant – N/A for Kiogora Mugambi & Co. Advocates

For Respondents - Mr. Ochako for J.Okerosi Ochako & Co Advocates

