



**Ngesa v Wafula & another (Miscellaneous Application E019 of 2024)  
[2024] KEHC 14953 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14953 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
MISCELLANEOUS APPLICATION E019 OF 2024  
WM MUSYOKA, J  
NOVEMBER 28, 2024**

**BETWEEN**

**WILFRIDA OTIENO NGESA ..... APPLICANT**

**AND**

**SAMUEL WAFULA ..... 1<sup>ST</sup> RESPONDENT**

**MARY ATIENO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. On 20<sup>th</sup> September 2024 I delivered a ruling herein where I held that the filing of this miscellaneous cause was in abuse of court process, as the application filed herein, dated 25<sup>th</sup> April 2024, ought to have been filed in Busia HCSC No. 18 of 2016, as it was in respect of orders that had been made on 29<sup>th</sup> January 2019, in Busia HCSC No. 18 of 2016.
2. I directed that the file in Busia HCSC No. 18 of 2016 be availed before me, for perusal, so that I could consider consolidation of this cause with the succession cause.
3. The file in Busia HCSC No. 18 of 2016 has been availed, and I have perused it. It has a mention date, scheduled for 12<sup>th</sup> February 2025. I had delivered a ruling, in that cause, Busia HCSC No. 18 of 2016, on 15<sup>th</sup> March 2024, where I had struck out a summons, dated 13<sup>th</sup> July 2023, as it sought distribution of the estate, yet the grant herein had already been confirmed, and the matter was awaiting transmission of the estate, based on confirmation orders made in that cause on 29<sup>th</sup> January 2019. The mention, scheduled for 12<sup>th</sup> February 2025, is to confirm whether transmission of the estate has been done in accordance with the orders of 29<sup>th</sup> January 2019, so that the administration process can be declared complete, and the court file closed.
4. The application filed herein, dated 25<sup>th</sup> April 2024, seeks stay of the confirmation orders made on 29<sup>th</sup> January 2019, in Busia HCSC No. 18 of 2016, and leave to file appeal against those orders, out of



time. No reason has been advanced, as to why that application was not filed in Busia HCSC No. 18 of 2016, where the impugned order was made, and why an appeal, against the confirmation orders of 29<sup>th</sup> January 2019, was not filed sooner, or leave to file it was not sought sooner.

5. It would appear that the application filed herein, dated 25<sup>th</sup> April 2024, was a reaction to the orders made in my ruling of 15<sup>th</sup> March 2024, in Busia HCSC No. 18 of 2016. If the applicant was aggrieved by my ruling of 15<sup>th</sup> March 2024, in Busia HCSC No. 18 of 2016, she should have appealed against the orders made in that ruling, instead of initiating a separate cause, to address matters that are the subject of pending proceedings.
6. I am not persuaded that this cause should be consolidated with Busia HCSC No. 18 of 2016. It was initiated in abuse of court process. It should be closed. Let the file in Busia HCSC No. 18 of 2016 be returned to the registry, to await the mention on 12<sup>th</sup> February 2025. The application herein, dated 25<sup>th</sup> April 2024, is hereby struck out. The instant file shall be closed forthwith. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA THIS 28<sup>TH</sup> DAY OF NOVEMBER 2024.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Ms. Wilfrida Otieno Ngesa, the applicant, in person.

Advocates

Mr. Odera, instructed by Odhiambo Odera & Company, Advocates for the respondents.

