



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyangweso v Barasa & 2 others (Civil Appeal E009 of 2020)  
[2023] KEHC 19281 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19281 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL E009 OF 2020  
WM MUSYOKA, J  
JUNE 30, 2023**

**BETWEEN**

**ANDREW O NYANGWESO ..... APPELLANT**

**AND**

**ALLOYS BARASA ..... 1<sup>ST</sup> RESPONDENT**

**OYE ASHIOYA ..... 2<sup>ND</sup> RESPONDENT**

**EMMANUEL OTIANGALA ..... 3<sup>RD</sup> RESPONDENT**

*(An appeal arising from orders made by Hon. PY Kulecho, Deputy Registrar, DR, on 28th October 2020, in Busia HCJR No. 213 of 2018)*

**JUDGMENT**

1. The appeal herein arises from a decision by a Deputy Registrar in proceedings in Busia HCJR No. 213 of 2018. The orders made by the Deputy Registrar related to a notice to show cause.
2. A Deputy Registrar is an officer in the High Court, and the orders he makes, in that capacity, are not made in the capacity of a magistrate, but as an officer of the High Court. The decision of a Deputy Registrar is not that of a magistrate's court, for it is an order of the High Court. His decision, as Deputy Registrar is, therefore, not available for appeal at the High Court. It is awkward, to have orders made in proceedings conducted at the High Court, being appealed against at the High Court.
3. What should happen, with respect to an order made by a Deputy Registrar, where a party is aggrieved by it, is to apply to the Judge, in the cause where the order is made, for a review. Initiating a separate cause, at the High Court, on appeal against that order, is not available, for a Judge of the High Court cannot sit on appeal on orders made at the High Court, by another Judge or a Deputy Registrar. A decision by a Deputy Registrar, of the High Court, is not available for appeal at the High Court, nor at the Court of Appeal.



4. Consequently, what the appellant herein should have done, once he became aggrieved by the order made by the Deputy Registrar, in Busia HCJR No. 213 of 2018, was to file an application for review in Busia HCJR No. 213 of 2018, to be heard by a Judge in Busia HCJR No. 213 of 2018, so that the determination by the Judge would then be available for appeal at the Court of Appeal.
5. As it is, the appeal herein is misconceived, incompetent, bad in law and filed in abuse of court process. I, accordingly, strike it out. The 2<sup>nd</sup> respondent shall have the costs. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 30<sup>TH</sup> DAY OF JUNE 2023**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

**Appearances**

Andrew Nyangweso, the appellant, in person.

Oye Ashioya, the 2<sup>nd</sup> respondent, in person.

