

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

HC.C.A NO. 17 OF 2000

NYONGESA MANDAREAPPELLANT

VERSUS

1. EDWARD OTORO MANDARERESPONDENT

2. WILFRED OMONDI MANDARETHIRD PARTY/APPLICANT

R U L I N G

The applicant herein Wilfred Mandare Omondi in his application dated 12/05/2011 seeks to be enjoined as an interested party in this appeal. The grounds supporting the application are that the parties in this appeal have failed to proceed diligently with the administration of the estate and that this appeal has delayed in court for a long time.

This appeal was brought by Mandare Nyongesa Wakhungu against Edward Toro challenging the ruling of the Busia Resident Magistrate court delivered on 4/11/99 by one S.O. Omwega Resident Magistrate Busia. The court had dismissed the objection of the appellant who claimed a share in the estate of the deceased.

The applicant's main concern herein is that the appeal has not been fixed for hearing eleven years down the line.

It is correctly observed that this is fairly an old appeal having been filed in 1999. I have perused the record of the court which speaks for itself. The appellant has not bothered to fix the case for hearing diligently since directions were taken in 2004. The Respondent on the other hand has not fixed the matter for hearing or applied for dismissal as required by the law. The application by the Respondent for dismissal dated 06/07/11 was only filed on 10/10/11 after this application.

On the other hand I do not find any good grounds to join the applicant as a party. The appellant said in court that he is the administrator of the deceased's estate although this does not appear in the supporting affidavit. In the affidavit, the applicant states that he is the son of the deceased. Either way, it will not serve any useful purpose to enjoin the applicant in this appeal because he was not a party to the lower court case. However his concern is appreciated in the delay of this appeal because such delay has prevented the heirs of the estate of deceased of deceased from enjoying their inheritance.

I decline to grant the orders sought and dismiss the application with no order as to costs.

However, I direct that this appeal be set down for hearing within sixty (60) days failure to which this court will dismiss it on its own motion.

F.N. MUCHEMI J.

Ruling dated and delivered on this 3rd day of November 2011 in the presence of the applicant.

**F.N. MUCHEMI
J U D G E**