



**Murenga v Amakobe (Civil Appeal E033 of 2022 & E013 of 2023
(Consolidated)) [2025] KEHC 2501 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2501 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E033 OF 2022 & E013 OF 2023 (CONSOLIDATED)
WM MUSYOKA, J
FEBRUARY 21, 2025**

BETWEEN

UMULKHEIR ASHISWA MURENGA APPELLANT

AND

MUSA ODERA AMAKOBE RESPONDENT

(An appeal arising from the judgment of Hon. Idris N. Nyaboga, Senior Resident Kadhi, SRK, delivered on 23rd February 2021, in Busia KCDC No. 1 of 2020, and 7th September 2022, in Busia KCDC No. 1 of 2020)

RULING

1. On 22nd October 2024, I delivered a ruling, wherein I called for a complete record of appeal to be filed. A supplementary record of appeal was filed, dated 16th December 2024. The matter was mentioned on 20th January 2025, and I allocated a date for judgment, being 21st February 2025.
2. The supplementary record of appeal filed is still not complete. The first part of the judgment of the trial court, which should have the heading or title, the parties, the recitation of the pleadings and the narration of the testimonies of the parties is missing. It would be very difficult for me to determine whether the trial court appreciated the pleadings and the testimonies, without that part of the judgment. The portion of the judgment, exhibited in the supplementary record, only has the analysis. I would be unable to write the judgment herein in the circumstances.
3. There is a more fundamental problem though. There has been no compliance with section 65(1)(c) of the *Civil Procedure Act*, Cap 21, Laws of Kenya. It escaped my attention, and the parties did not bring it to my notice, by way of reminder.
4. Section 65(1)(c) of the *Civil Procedure Act* provides:

“ 65. Appeal from other courts



- (1) Except where otherwise expressly provided by this Act, and subject to such provision as to the furnishing of security as may be prescribed, an appeal shall lie to the High Court—
 - (a) ...
 - (b) ...
 - (c) from a decree or part of a decree of a Kadhi's Court, and on such an appeal the Chief Kadhi or two other Kadhis shall sit as assessor or assessors.
- (2) ...”

5. Therefore, according to the above provision, the Judge handling the appeal is required, at the hearing of the appeal, to sit with the Chief Kadhi, and where that is not possible, for whatever reason, with 2 other Kadhis. The role of the Chief Kadhi or the 2 other Kadhis shall be that of assessors. The failure to sit with the Chief Kadhi or the other 2 Kadhis as assessors would be a fundamental error, and any appellate hearing conducted by the Judge sitting alone, without the assessors, would be rendered a nullity, and the resultant judgment available for setting aside, according to Haji & 4 others vs. Ali & 3 others [2023] KECA 1120 (KLR)(Musinga, Laibuta & Ali-Aroni, JJA), where it was held that the requirement, under section 65(1)(c) of the *Civil Procedure Act*, is mandatory, and not permissive.
6. It was explained, in Mariam Ahmed Hirsi & another vs. Halima Issa Osman [2016] KEHC 5018 (KLR)(Musyoka, J) and Ali Mohamed Karama vs. Amina Shiekh Mohamed [2020] KEHC 9986 (KLR)(Thande, J), that the Chief Kadhi, or the 2 other Kadhis, sit as assessors, to assist the Judge, to the limited extent of providing opinion on issues or matters of Islamic law, which opinion is ultimately not binding on the Judge.
7. In view of the above, I shall not prepare the judgment herein at this stage. There must be compliance with section 65(1)(c) of the *Civil Procedure Act*. In that behalf, I hereby direct the Deputy Registrar to arrange for a sitting with the Chief Kadhi, or 2 other Kadhis, for the purpose of hearing the appeal, orally, either in open court or virtually. The 2 other Kadhis shall exclude Hon. Idris N. Nyaboga, Senior Resident Kadhi, who delivered the judgment the subject of the appeal.
8. Orders accordingly.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 21ST DAY OF FEBRUARY 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Azenga Alenga, Legal Researcher.

Advocates

Mr. Ouma, instructed by BM Ouma & Company, Advocates for the appellant.

Mr. Otanga, instructed by Bogonko Otanga & Company, Advocates for the respondent.

