



REPUBLIC OF KENYA



**Amukobe v Murenga (Family Appeal E001 of 2024)  
[2025] KEHC 3440 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3440 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
FAMILY APPEAL E001 OF 2024  
WM MUSYOKA, J  
MARCH 21, 2025**

**BETWEEN**

**MUSA ODERA AMUKOBE ..... APPELLANT**

**AND**

**UMULKHEIR ASHISWA MURENGA ..... RESPONDENT**

*(An appeal arising from the ruling of Hon. Shaban Issa, Principal Kadhi,  
PK, delivered on 11th January 2024, in Busia KCDC No. 1 of 2020)*

**RULING**

1. On 16<sup>th</sup> September 2024, I gave directions, for canvassing of the appeal herein, by way of written submissions, that were to be filed and exchanged in 21 days. On 17<sup>th</sup> February 2025, it was confirmed that written submissions had been filed, and I allocated 21<sup>st</sup> March 2025 as the day when I shall deliver judgement.
2. When I settled to prepare the judgement, it dawned on me that there was a fundamental issue to be addressed, which meant that it would be premature to write the judgement.
3. It transpired that section 65(1)(c) of the [Civil Procedure Act](#), Cap 21, Laws of Kenya, had not been complied with, which provides as follows:

“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) ...”

4. The provision requires that the Judge handling the appeal to sit with the Chief Kadhi or with 2 other Kadhis, as 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 judgement 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.
5. In view of the above, I shall refrain from preparing the judgement in this matter, at this stage, so that it is brought into compliance first, with section 65(1)(c) of the *Civil Procedure Act*.
6. 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, either in open court or virtually. The 2 other Kadhis shall exclude Hon. Shaban Issa, Principal Kadhi, who delivered the impugned ruling, the subject of the appeal.
7. I further direct that, as this appeal is related to the appeal in Busia HCCA No. E033 of 2022, for they arose from the same proceedings, being Busia KCDC No. 1 of 2020, the 2 files be consolidated, for simultaneous disposal.
8. Orders accordingly.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 21<sup>ST</sup> DAY OF MARCH 2025.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Ms. Azenga Alenga, Legal Researcher.

Advocates

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

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

