



**Chumbe (Suing as the administrator to the Estate of the Late Alex Chumbe Omio) v Miyawa  
(Miscellaneous Application E022 of 2024) [2024] KEHC 4609 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4609 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS APPLICATION E022 OF 2024**

**RE ABURILI, J  
APRIL 11, 2024**

**BETWEEN**

**JOHN AGWENGE CHUMBE (SUING AS THE ADMINISTRATOR TO THE  
ESTATE OF THE LATE ALEX CHUMBE OMIO) ..... APPLICANT**

**AND**

**ENOS KARANI MIYAWA ..... RESPONDENT**

**RULING**

1. From the documents filed in support of the application dated 22<sup>nd</sup> February 2024, an appeal was filed in this court being HCCA No. 16 of 1992, arising from Tamu DM Civil Miscellaneous Application No. 4 of 1989.
2. The appeal was filed by Alex Chumbe Choi and Okuto Chumbe. There is an amended application dated 3<sup>rd</sup> April 2024 enjoining the administrator of the estate of the Respondent Enos Karani Miyawa who has since died.
3. I have perused the application as amended and the Replying Affidavit of Andrew Matoka Okoko dated 9<sup>th</sup> April 2024 wherein he deposes that there is no evidence of the existence of Civil Appeal No. 16 of 1992 and that the amendments are in respect of the lower court file.
4. I observe that an affidavit cannot be amended. However, an application can be amended and was properly amended, as a pleading.
5. Order 51 Rule 1 of the [Civil Procedure Rules](#) does not mandate that an affidavit be filed in support of the application hence the amended affidavit though defective, does not invalidate the application as amended.



6. In addition, the existence of an appeal is a matter of fact and there is no doubt that HCCA No. 16 of 1992 was filed in this court vide Memorandum of Appeal dated 15<sup>th</sup> March 1992 and on 15<sup>th</sup> November 1994, Kuloba J issued a stay of execution order pending hearing and determination of the appeal.
7. There is no evidence that the appeal file has been traced.
8. I however note that the jurisdiction of this court in land matters, subject of the dispute between the parties, has since been ousted by Article 162 (2) (b) as read with Article 165 (5) (b) of the Constitution. This was after the appeal was filed.
9. In the premises, I find it appropriate to order that HCCA No. 16 of 1992 be reconstructed and the file as reconstructed be placed before the Environment and Land Court for directions on the way forward.
10. These proceeding and Ruling be typed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 11<sup>TH</sup> DAY OF APRIL, 2024**

**R. E. ABURILI**

**JUDGE**

