



REPUBLIC OF KENYA



**Olayo v Olayo (Succession Appeal E007 of 2022)
[2024] KEHC 3894 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3894 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION APPEAL E007 OF 2022
WM MUSYOKA, J
APRIL 19, 2024**

BETWEEN

CAMULUS ODHIAMBO OLAYO APPELLANT

AND

GEORGE OCHIENO OLAYO RESPONDENT

(an appeal arising from orders made in the ruling of Hon. T Madowo, Senior Resident Magistrate, SRM, in Busia CM CSC No. 604 of 2018, of 25th October 2022)

RULING

1. The *Civil Procedure Rules*, at Order 42 Rule 13(4)(c), requires that the original trial court records be availed. There is utility for that rule. The High Court exercises a supervisory jurisdiction over the proceedings conducted by a subordinate court, according to Article 165(6) of the *Constitution*. For effective supervision, the trial records of the subordinate court must be availed for the purpose of determining the appeal. The said record is also critical, for the purpose of authenticating the record of appeal.
2. The trial court record herein has not been availed, and I am, therefore, unable to make a determination.
3. Let the Deputy Registrar call for the original trial court records. I shall mention the matter, on a date that I shall allocate at the delivery of this ruling, for compliance and further directions.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 19TH DAY OF APRIL 2024

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.



Advocates

Mr. Wanjala, instructed by Omurwa Advocates, Advocates for the appellant.

Mr. Ashioya, instructed by Ashioya & Company, Advocates for the respondent.

