



**Republic v Nyaga (Criminal Appeal E004 of 2023)
[2024] KEHC 6714 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6714 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL APPEAL E004 OF 2023
WM MUSYOKA, J
JUNE 7, 2024**

BETWEEN

REPUBLIC APPELLANT

AND

SAMUEL NYAGA RESPONDENT

(Appeal from conviction and sentence by Hon. P. Olengo, Senior Principal Magistrate, SPM, in Busia CMCCRC No. 1265 of 2021, of 3rd May 2021)

RULING

- Samuel Nyaga, to be referred to hereafter as the respondent, had been charged before the primary court, in Busia CMCCRC No. E1266 of 2021, on 5 counts of different offences under the Crops Act, Cap 318, Laws of Kenya, and the East African Community Custom Management Act, 2004, relating to failure to register as a dealer, transporting a scheduled crop from a non-registered dealer, importing a maize consignment through a non-designated point, being in possession of uncustomed goods, and ferrying restricted goods. There is a ruling on a no case to answer, but there is no record of the proceedings, and I cannot tell from the ruling, how many witnesses testified against him, and what the purport of their testimonies was.
- This matter is all jumbled up. The criminal case, in which the respondent herein was tried, was Busia CMCCRC No. E1266 of 2021. The trial court record for Busia CMCCRC No. E1266 of 2021 has been availed, the accused person in that file was the respondent herein. However, that trial court record does not have any proceedings, all it carries is a photostat copy of the handwritten and a typed copy of the ruling delivered on May 3, 2021 in Busia CMCCRC No. E1266 of 2021. However, the appeal herein, going by the petition of appeal filed herein, which is undated, but was filed herein on January 10, 2020, is in respect of proceedings in Busia CMCCRC No. 1265 of 2021. The original trial court records in respect of Busia CMCCRC No. 1265 of 2021 have not been availed, and therefore, I cannot tell who the accused person in that matter was.



3. The appellant has not filed a record of appeal, with respect to the proceedings in either Busia CMCCRC No. 1265 of 2021, or Busia CMCCRC No. E1266 of 2021. I do not, therefore, have the benefit of reading through the proceedings that led up to the impugned ruling of May 3, 2021. What are purported to be the proceedings, in Busia CMCCRC No. E1266 of 2021, is a one-page document, displaying the proceedings that were conducted on April 16, 2021 and April 19, 2021. April 16, 2021 was when the respondent took plea. The record of April 19, 2021 is not complete, for it only has the Coram. After that there is the ruling of May 3, 2021. So, how do I determine this appeal without sight of the proceedings taken, which culminated in that ruling?
4. I see an original trial court record placed inside this appeal file. It is in respect of Busia CMCCRC No. 1217 of 2021. The accused person was Paul Muriithi Kinyua. There are typed proceedings in there. 6 witnesses were presented, and testified, and a ruling on a no case to answer was delivered on April 30, 2021, where the court found that no *prima facie* case had been established, and the accused person, in that case, was acquitted. That case had been consolidated with another, Busia CMCCRC No. 1188 of 2021, by an order made on April 27, 2021. The accused person, in Busia CMCCRC No. 1188 of 2021, was Harir Suez. I have perused the proceedings in Busia CMCCRC No. 1217 of 2021, and they were limited to the accused person in that case.
5. I have been unable to see any link between the proceedings in Busia CMCCRC No. 1217 of 2021, and those in Busia CMCCRC No. 1265 of 2021, mentioned in the petition of appeal; and Busia CMCCRC No. E1266 of 2021, where the respondent herein was the accused person. Yet, the only available full record of the proceedings, where witnesses were recorded as they testified, is in Busia CMCCRC No. 1217 of 2021. I have no full record of the proceedings in Busia CMCCRC No. E1266 of 2021, where the respondent herein was the accused, nor in Busia CMCCRC No. 1265 of 2021, referred to in the petition of appeal. Without that full record, of the testimonies of the witnesses presented by the prosecution, there would be no basis upon which I can determine this appeal.
6. My inclination was initially to dismiss the appeal herein, because of the mess that I have highlighted above. However, I realised that the appellant may not be to blame. I have noted that most appeals at the High Court at Busia, be they civil or criminal, are stuck for absence of the original trial court records and records of appeal. I do not know what is happening at the court registries at the Chief Magistrate's Court. Files appear to disappear completely once matters are concluded there, so that once appeals are filed against the determinations there, the relevant files become completely unavailable. There are criminal appeals here filed as far back as 2021, in respect of which directions have never been taken, because the original trial court records are unavailable, and so the appellants cannot generate and file records of appeal. The Deputy Registrar and I have to mention these matters countless times, to no avail, wasting a lot of judicial time in the process.
7. As a way forward, I direct the appellant to file records of appeal in respect of the relevant matters that I have mentioned above. The Deputy Registrar shall call for the relevant original trial court records, once more; and shall cause a certified copy of this ruling to be furnished to the Chief Magistrate. The matter shall be mentioned for compliance and further directions. Orders accordingly.

RULING IS DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, THIS 7TH DAY OF JUNE 2024

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates



Ms. Chepkonga, instructed by the Director of Public Prosecutions, for the appellant.

