



**Ngesa v Wafula & another (Miscellaneous Application E019 of 2024)
[2024] KEHC 10963 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10963 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS APPLICATION E019 OF 2024
WM MUSYOKA, J
SEPTEMBER 20, 2024**

BETWEEN

WILFRIDA OTIENO NGESA APPLICANT

AND

SAMUEL WAFULA 1ST RESPONDENT

MARY ATIENO 2ND RESPONDENT

RULING

1. The application, dated 25th April 2024, seeks stay of execution of orders made on 29th January 2019 for confirmation of a grant, and leave to lodge an appeal out of time with respect to the said orders.
2. The impugned orders, made on 29th January, 2019, were not made in this cause, but in another, being Busia HCSC No. 18 of 2016. The ideal situation, where one desires to challenge, on appeal, orders made in a particular cause, is to seek orders for leave to lodge the appeal, if he or she happens to be out of time, in the cause where the orders were made. It does not lie with initiating a miscellaneous cause, for leave to appeal against the impugned orders made in another cause. Filing a miscellaneous cause, in such a scenario, would amount to filing multiple causes or suits, which is unnecessary, and it merely wastes time and causes confusion. It could amount to an abuse of the court process.
3. What I am saying, in short, is that the Motion, dated 25th April 2024, ought to have been filed in Busia HCSC No. 18 of 2016, and that the filing of this miscellaneous cause was in abuse of court process.
4. Although it was filed in abuse of court process, I shall not dismiss it outright, seeing that the applicant is acting in person. I shall give her the benefit of the doubt, and bend towards substantive justice. As the said application belongs in Busia HCSC No. 18 of 2016, and not in these separate proceedings, I shall not decide it here, but in the cause where it belongs.



5. Consequently, I hereby direct the Deputy Registrar to cause the court file in Busia HCSC No. 18 of 2016 to be traced, and to be put together with the instant file, so that, after perusing it, I may consider whether to consolidate the 2 causes. The matter shall thereafter be mentioned on 8th October 2024, on the way forward. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 20TH DAY OF SEPTEMBER 2024

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Wilfrida Otieno Ngesa, the applicant in person.

Advocates

Mr. Odera, instructed by Odhiambo Odera & Company, Advocates for the respondents.

