



Otaba v Kweyu (Suing on behalf of the Estate of Bonface Ouma Kweyu) (Civil Appeal 10 of 2020) [2024] KEHC 10581 (KLR) (6 September 2024) (Ruling)

Neutral citation: [2024] KEHC 10581 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL 10 OF 2020
WM MUSYOKA, J
SEPTEMBER 6, 2024**

BETWEEN

VINCENT OTABA APPELLANT

AND

ZEBIO JUMA KWEYU (SUING ON BEHALF OF THE ESTATE OF BONFACE OUMA KWEYU) RESPONDENT

(An appeal arising from the decision of Hon. Lucy Ambasi, Chief Magistrate, CM, in Busia CMCCC No. 400 of 2006, on 3rd July 2020)

RULING

1. The application, dated 29th February 2024, invites me to strike out the appeal herein, on grounds that the same is *res judicata*, as it was a replica of Busia HCCA No. 13 of 2020, which arose from the same judgment, and which was determined on 28th July 2023.
2. The respondent did not reply to the application.
3. The appellant filed detailed written submissions, supported by authorities.
4. I have perused the record. I have seen the memorandum of appeal filed in Busia HCCA No. 13 of 2020, and I have noted that that appeal and the present one arose from the same judgment, and the appellant is party to both appeals. I note further that the appeal in Busia HCCA No. 13 of 2020 was determined, on 28th July 2020, when it was dismissed.
5. Clearly, the appellant herein was prosecuting 2 appeals, albeit through different law firms, while challenging the same judgment. That is what abuse of court process is about. The instant appeal has become *res judicata* that in Busia HCCA No. 13 of 2020, and it is no longer tenable.



6. Consequently, I hereby dismiss the appeal herein, with costs to the respondent. The file herein shall be closed.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 6TH DAY OF SEPTEMBER 2024.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. JJ Mukavale, Advocate for the appellant.

Mr. Shihemi, instructed by Maloba & Company, Advocates for the respondent.

