



REPUBLIC OF KENYA



**Onyango v Omakada (Succession Appeal E001 of 2023)  
[2024] KEHC 10559 (KLR) (6 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 10559 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION APPEAL E001 OF 2023  
WM MUSYOKA, J  
SEPTEMBER 6, 2024**

**BETWEEN**

**SIMON ENOCK OMERIKWA ONYANGO ..... APPELLANT**

**AND**

**JOSEPH OCHAKALA OMAKADA ..... RESPONDENT**

*(an appeal arising from orders made in the ruling of Hon. P. Olengo, Senior Principal Magistrate, SPM, in Busia CMCS No. 579 of 2018, on 31st March 2023))*

**JUDGMENT**

1. The memorandum of appeal herein, dated 26<sup>th</sup> April 2023, presents an appeal against orders that were made in a ruling that was allegedly delivered on 31<sup>st</sup> March 2023, by Hon. P Olengo, SPM.
2. The appellant filed a record of appeal, and the original trial court records were availed. I have very carefully perused the said 2 records, and I have been unable to trace the ruling allegedly delivered on 31<sup>st</sup> March 2023. Nothing happened on that date, according to the record. The only ruling on record was delivered on 3<sup>rd</sup> April 2023, and I cannot tell whether it was the one that the appellant intended to appeal against.
3. As the appeal herein is founded on a non-existent ruling, and parties are bound by their pleadings, I shall have no hesitation in dismissing the same, as I hereby do. I note that there have been some court attendances on behalf of the respondent. I shall award costs to the respondent. It is so ordered.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 6<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**W MUSYOKA**

**JUDGE**



Mr. Arthur Etyang, Court Assistant.

Advocates

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

Mr. Ouma, instructed by BM Ouma & Company, Advocates for the respondent.

