



**Syeunda v Odimah (Civil Appeal E002 of 2021)  
[2024] KEHC 10942 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10942 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL E002 OF 2021  
WM MUSYOKA, J  
SEPTEMBER 20, 2024**

**BETWEEN**

**ALEX TAABU SYEUNDA ..... APPELLANT**

**AND**

**DESTERIO OKUMU ODIMAH ..... RESPONDENT**

*(an appeal arising from the decision of Hon. WK Chepseba, Chief Magistrate, CM, in Busia CMCCC No. 69 of 2014, of 19th November 2019)*

**RULING**

1. The appeal herein was initiated on 14<sup>th</sup> January 2021, when a memorandum of appeal, dated 12<sup>th</sup> January 2021, was filed.
2. An application, dated 20<sup>th</sup> October 2021, was filed herein on 20<sup>th</sup> October 2021, seeking review of orders that had been filed by the trial court, stay of execution of the decree of the trial court, and deposit of a title deed in court. The application was placed before the Judge on 11<sup>th</sup> November 2021, under certificate of urgency, and directions, relating to service, were given. It was responded to, and it came up several times, that is to say on 22<sup>nd</sup> November 2021, 7<sup>th</sup> February 2022, 6<sup>th</sup> June 2022, 3<sup>rd</sup> October 2022, 5<sup>th</sup> December 2022, 13<sup>th</sup> March 2023, 15<sup>th</sup> May 2023, 10<sup>th</sup> July 2023, 18<sup>th</sup> September 2023, 16<sup>th</sup> October 2023, and on 5<sup>th</sup> February 2024, when the appeal was eventually dismissed, for having been abandoned. .
3. What I am being called upon to determine is a Motion, dated 14<sup>th</sup> March 2024. It seeks stay of execution of the orders made on 5<sup>th</sup> February 2024, and consequential orders, stay of execution of the judgement of the trial court and the setting aside of the ex parte orders of 5<sup>th</sup> February 2024. The appellant complains that the said orders of 5<sup>th</sup> February 2024 were made in his absence, as he nor his Advocate was aware of the mention date slated for that day, and that notices were being served on the firm of Mwamu & Company, instead of Were & Company, the Advocates on record for him. It is pointed out that



Were & Company, Advocates, came on record on 5<sup>th</sup> September 2022, when a notice of appointment was filed.

4. This is a matter where the appellant has had no appetite to prosecute. The memorandum of appeal was filed on 14<sup>th</sup> January 2021, and as at 5<sup>th</sup> February 2024, some 3 years later, no record of appeal had been filed. As no record of appeal had been lodged by then, directions had not been taken, on the disposal of the appeal. From the record before me, it would appear that it was the respondent who took the matter more seriously, by way of attending court, whenever the matter came up, in the absence of the appellant.
5. I am surprised that the appellant now complains that action was being taken without his knowledge, yet this was his appeal. He should have been driving it. The fact that there have been so many court attendances, when he did not appear, either personally or through his Advocate, would mean that he has never had any interest in the matter. He filed the appeal, and thereafter went to sleep, only to wake up after the appeal was dismissed. The court registry is not a parking lot for dead appeals, and it is not the business of the court to keep appeals alive for parties who are not interested in them.
6. I find no merit at all in the application, dated 14<sup>th</sup> March 2024, for no explanations have been given as to why the appellant has not taken any steps to advance his appeal. He complains of notices being served on his former Advocates, instead of on his current Advocates. That may be so, but what steps did his said current Advocates take since their appointment, on 5<sup>th</sup> September 2022, to advance the appeal? Why did the said Advocates have to wait for notices to issue to them, instead of being the ones to cause the notices to issue? The appeal was by the appellant, the initiative to move the appeal should have come from him, or his appointed agents. It seems ridiculous, to me, that the appellant and his Advocates are now looking for someone to blame for their failure, instead of themselves. The application is dismissed. Let the respondent have the costs.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 20<sup>TH</sup> DAY OF SEPTEMBER 2024**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

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

Mr. Bogonko, instructed by Bogonko Otanga & Company, Advocates for the respondent.

