



REPUBLIC OF KENYA



KENYA LAW
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Ouma v Ouma (Civil Appeal E059 of 2024) [2025] KEHC 13840 (KLR) (3 October 2025) (Ruling)

Neutral citation: [2025] KEHC 13840 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA**

CIVIL APPEAL E059 OF 2024

WM MUSYOKA, J

OCTOBER 3, 2025

BETWEEN

BONIFACE OUMA APPELLANT

AND

EDWARD OUMA RESPONDENT

(An appeal arising from the ruling and order of Hon. Kassim Akida, Resident Magistrate, RM, delivered on 31st October 2024, in Busia CMCCC No. 272 of 2023)

RULING

1. The suit, at the primary court, was initiated by the respondent, against the appellant, for damages, with respect to personal injury, founded on the tort of trespass to person. The claim was that the appellant had inflicted personal injuries on the respondent on 13th May 2017, and that the appellant had been found guilty of causing grievous harm on the respondents, in a criminal case, where he was prosecuted for the offence.
2. In response to the claim, the appellant filed a defence, denying liability. He also pleaded that the trial court had no jurisdiction over the matter as it was of a criminal nature; the suit was time-barred; and the case was *res judicata* the criminal case in Busia CMCCRC No. 2823 of 2019, where the appellant had been prosecuted.
3. No formal hearing on the main suit was conducted in the matter. The issue herein arises from an interlocutory order, made in a ruling delivered on 31st October 2024, founded, allegedly, on an application, dated 19th July 2024, which turned on costs. There had been a ruling, delivered on 29th May 2024, on the preliminary objection raised in the defence, on the suit being time-barred, having been filed outside the 3 years allowed by section 4(2) of the *Limitation of Actions Act*, Cap 22, Laws of Kenya. The trial court found and held that the suit was time-barred, and struck it out, with costs.



4. The trial court records, on the application the subject of the ruling appealed against, dated 31st October 2024, are hazy on what it was all about. The handwritten original trial court record has an order, made on 5th September 2024, for a ruling to be delivered on 31st October 2024, but the same is silent on what that ruling was to be about, or on the application on which it was to be based. The original trial court record is silent on whether a ruling was delivered on 31st October 2024, and a copy of a ruling, delivered on that date, if at all, is not in the original trial court record.
5. The record of appeal, dated 26th March 2025, does have a ruling allegedly delivered on 31st October 2024, which purports that it was founded on an application dated 19th July 2024. A copy of the application dated 19th July 2024, which is not in the original trial court record, is not part of the appeal record dated 26th March 2025. The applications in the record of appeal are Motions dated 3rd August 2023 and 8th August 2024.
6. The ruling of 31st October 2024, in the record of appeal, dated 26th March 2025, does not appear to have had any bearing on the proceedings before the trial court, for it relates to a judgement of Kshs. 252,000.00, entered on 27th February 2024. There was no such judgement in the suit the subject of the instant appeal, for there had been no judgement entered in that suit before it was struck out, on 29th May 2024, for having been filed outside the limitation period. Secondly, the ruling of 31st October 2024, exhibited in the record of appeal, dated 26th March 2025, relates to a matter that was at the Small Claims Court, while the suit, the subject of the instant appeal, was not filed at the Small Claims Court, but at the Chief Magistrate's Court.
7. The ruling, exhibited in the record of appeal, is not aligned to the applications exhibited in the same record, but, apparently, to another application, which is not exhibited.
8. It would appear that there is something fundamentally wrong with the material before me. There is something which is completely amiss about it. It would not do justice to determine the matter as it is.
9. In view of the above, I shall refrain from determining the appeal, as it is, based on the material on record. Instead, I shall allow the appellant time to consider salvaging it, by getting his record of appeal right. There shall be 30 days for doing that. The matter shall be mentioned on 28th October 2025, for compliance, and allocation of a date for judgement. Orders accordingly.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 3RD DAY OF OCTOBER 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Mr. Opwapo, instructed by Opwapo Advocates, the Advocates for the appellant.

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

