



REPUBLIC OF KENYA



**Mbeja v Mbeja & another (Succession Appeal E002 of 2022)  
[2025] KEHC 15193 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15193 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION APPEAL E002 OF 2022  
WM MUSYOKA, J  
OCTOBER 23, 2025**

**BETWEEN**

**GLADYS OBINDA MBEJA ..... APPELLANT**

**AND**

**ROSEMARY AKUMU MBEJA ..... 1<sup>ST</sup> RESPONDENT**

**MAXIMILLA NEKESA MBOKA ..... 2<sup>ND</sup> RESPONDENT**

*(Appeal from the ruling and orders, of Hon. Mrs. Lucy Ambasi, Chief Magistrate, CM, of 1st March 2022, in Busia CMCSC No. 27 of 2016)*

**JUDGMENT**

1. The appeal herein arises from orders, that were extracted from a ruling that was delivered by the trial court, on 1<sup>st</sup> March 2022. The exact words of the said ruling are:

“The Chamber Summons dated 23<sup>rd</sup> August 2021 seeking order for rental income be deposited in court be and is hereby allowed.

All the parties are directed to agree on the mode of distribution within 90 days and in default then the court shall proceed to distribute the estate. The C/S of 14<sup>th</sup> January 2022 be marked as compromised.”

2. The appellant has no issue with the orders made on 1<sup>st</sup> March 2022, but with how those orders were extracted. The said orders were extracted from that ruling on 4<sup>th</sup> March 2022, and the purport of the formal order, as extracted, was that the application, dated 23<sup>rd</sup> August 2021, had been allowed as prayed. The extracted order captures the orders granted, in the language that they were framed in, in the application, dated 23<sup>rd</sup> August 2021. The appellant is aggrieved by the formal order of 4<sup>th</sup> March



2022, but not its mother ruling of 1<sup>st</sup> March 2022. The appeal is on the extracted orders of 4<sup>th</sup> March 2022, and not the original orders of 1<sup>st</sup> March 2022.

3. In the memorandum of appeal, dated 30<sup>th</sup> March 2022, the appellant prays:

“That the ruling of the Lower Court which was delivered on 1/3/2021 and the subsequent orders that were issued on 4/3/22 be set aside and they be substituted with an order dismissing the Respondent’s application dated 23/8/21.”

4. This appeal is founded on a misconception. The only orders, that can be appealed from, are the original orders of the trial court, of 1<sup>st</sup> March 2022. The court did not make any orders on 4<sup>th</sup> March 2022. The document, dated 4<sup>th</sup> March 2022, is a reflection of the orders made on 1<sup>st</sup> March 2022. The extract of the original orders of the trial court is not done by the Judge or Magistrate making the original orders, but by registry staff.

5. The extraction of formal orders, from the original orders in a ruling or judgment, is an administrative or clerical function. It is not a judicial function. An appeal arises from a judicial order of the court, made by the Judge or the Magistrate, but not the administrative or clerical act of registry staff, of summarising the ruling, delivered by the Judge or the Magistrate, into the formal order.

6. The original order, in the ruling of 1<sup>st</sup> March 2022, is one and the same with the formal or extracted order of 4<sup>th</sup> March 2022. However, an appeal can only be against the act of the trial Magistrate, of 1<sup>st</sup> March 2022, and not the administrative acts of the registry staff, of 4<sup>th</sup> March 2022. If the order, as extracted by the registry staff, is not aligned to the original order, as made by the Magistrate or Judge, then the extracted order ought to be re-worked, or re-drafted, or re-drawn, to bring it to conformity with the order of the Magistrate or Judge. That is done at the registry, by the staff at the registry, and not in chambers, by the Magistrate or the Judge.

7. The way to deal with the administrative act would be to address it administratively, by approaching the registry, to have the issue sorted out administratively. The alternative, if that approach does not work, is to move the trial Magistrate, for review of the formal or extracted order, in this case that of 4<sup>th</sup> March 2022, on account of error on the face of the record. Seeking clarification, on the purport of the original orders, in this case, the orders of 1<sup>st</sup> March 2024, as against the formal or extracted order of 4<sup>th</sup> March 2022, from the trial Magistrate, would be the other approach.

8. The other ground that I see in the memorandum of appeal is that the trial court had granted an application, dated 14<sup>th</sup> January 2021, but then the orders extracted related to the application, dated 23<sup>rd</sup> August 2022, without taking into account orders made on 20<sup>th</sup> May 2021. I have difficulty understanding this ground.

9. For one, there was no application dated 23<sup>rd</sup> August 2022, and it would not have been practical to grant orders on it on 1<sup>st</sup> March 2022. Secondly, the ruling of 1<sup>st</sup> March 2022 was specific, that it was on the application dated 23<sup>rd</sup> August 2021, and that was why the trial court recorded that, “The Chamber Summons dated 23<sup>rd</sup> August 2021 seeking order for rental income be deposited in court be and is hereby allowed.” That was the principal order in the ruling of 1<sup>st</sup> March 2022, and it determined and disposed of the application dated 23<sup>rd</sup> August 2021, and not that dated 14<sup>th</sup> January 2021. The ruling of 1<sup>st</sup> March 2022 was not on the application dated 14<sup>th</sup> January 2021, but that application, dated 14<sup>th</sup> January 2021, was a casualty of the ruling.

10. Thirdly, there was no application, dated 14<sup>th</sup> January 2022, in the trial court records. The reference, to that application, by the trial court, was in error, for the application that was pending was dated 14<sup>th</sup>



January 2021. The ruling of 1<sup>st</sup> March 2022 must have intended to refer to that application of 14<sup>th</sup> January 2021, and not the non-existent application, purportedly dated 14<sup>th</sup> January 2022.

11. Fourthly, the trial court did not determine the application dated 14<sup>th</sup> January 2021, in the ruling of 1<sup>st</sup> March 2022, for that ruling determined the application dated 23<sup>rd</sup> August 2021. What the trial court did was to state that the application, dated 14<sup>th</sup> January 2021, had been compromised by the orders made on 1<sup>st</sup> March 2022, with respect to the application dated 23<sup>rd</sup> August 2021. In other words, the ruling of 1<sup>st</sup> March 2022, on the application dated 23<sup>rd</sup> August 2021, had overtaken the earlier application, and superseded it, rendering it irrelevant.
12. I am not at all persuaded that the trial court was mistaken or mixed-up about the 2 applications, that dated 14<sup>th</sup> January 2021 and the other dated 23<sup>rd</sup> August 2021. I have had the liberty of perusing both. The 2 applications were related. They largely turned on the matter of rents. Once the court made the order, of 1<sup>st</sup> March 2022, on the application dated 23<sup>rd</sup> August 2021, the fact of that order was to automatically and collaterally dispose of the pending application, dated 14<sup>th</sup> January 2021.
13. The estate was not yet distributed, hence the ruling of 1<sup>st</sup> March 2022, directed that, “All the parties are directed to agree on the mode of distribution within 90 days and in default then the court shall proceed to distribute the estate.” Any issues arising, after 1<sup>st</sup> March 2022, relating to accounts on the matter of the rental income, could quite appropriately be handled during the yet to be conducted proceedings on the distribution of the estate.
14. Fifthly, the appellant talks of an order made on 20<sup>th</sup> May 2021, which the trial court should have taken into account in the ruling of 1<sup>st</sup> March 2022. I have most scrupulously perused the trial court records, both the original trial file, and the typescript, and I have been unable to see any order made on 20<sup>th</sup> May 2021. I have not come across it. The trial court did not sit on 20<sup>th</sup> May 2021, according to the trial record. What I see is that the trial court sat on 11<sup>th</sup> May 2021, and its next sitting, after that, was on 13<sup>th</sup> July 2021. So, I have no idea on what the appellant means when she talks of an order made on 20<sup>th</sup> May 2021, which the trial court should have had in mind as it delivered the ruling of 1<sup>st</sup> March 2022.
15. There is no real appeal before me. Let the appellant file an appropriate application, at the trial court, to have the extracted order, of 4<sup>th</sup> March 2022, re-drawn, to align it to the ruling of 1<sup>st</sup> March 2022, if at all there is an inconsistency between the 2. The parties should focus on the distribution of the estate, as directed on 1<sup>st</sup> March 2022, and avoid these time-wasting manoeuvres. The appeal herein is hereby dismissed, with no order on costs. The original trial court file shall be returned to the relevant registry, while the instant appeal file shall be closed. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 23<sup>RD</sup> DAY OF OCTOBER 2025.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Ms. Eva Adhiambo, Legal Researcher.

Advocates

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

Mr. Okara, instructed by GK Okara & Company, Advocates for the respondents.

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