

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**CIVIL APPEAL NO. E039 OF 2025**

**JOSEPH BWIRE NYONGESA.....APPELLANT**

**VERSUS**

**GEORGE BWIRE WAFULA.....1<sup>ST</sup> RESPONDENT**  
**WATU NOMINEES COMPANY LTD.....2<sup>ND</sup>**  
**RESPONDENT**

**PAUL ODHIAMBO.....3<sup>RD</sup> RESPONDENT**

**JACKLINE NAKHOLI ODWORI.....4<sup>TH</sup> RESPONDENT**

**(Appeal from the judgment and decree of Hon. Anne Karimi, Senior Resident Magistrate, SRM, delivered on 8<sup>th</sup> May 2025, in Port Victoria PMCC No. E008 of 2024)**

**RULING**

1. I am unable to write the Judgment in this matter.
2. The original trial court availed herein does not have the pleadings which were the foundation of the trial. I am unable to tell whether the pleadings availed in the record of appeal were the same pleadings used at trial.
3. The role of the first appellate court is to re-evaluate the material, analyse it and potentially come to its overall conclusions. All that can only be done on the basis the pleadings filed before the trial court. I do not have those pleadings in the trial records.

4. Let the Deputy Registrar cause the trial court to avail the original pleadings filed in the matter. The matter shall, thereafter, be mentioned before the Judge, on a date to be allocated by the Deputy Registrar.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN  
CHAMBERS, AT BUSIA, ON THIS 9<sup>TH</sup> DAY OF  
FEBRUARY 2026.**

**WM MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Advocates**

**Mr. Angode, instructed by EO Kweyu & Company,  
Advocates for the appellant.**

**Ms. Nakhulo, instructed by Omwenga & Company,  
Advocates for the 1<sup>st</sup> respondent.**

**Mr. Wabomba, instructed by Wabomba Masinde &  
Associates, Advocates for the 2<sup>nd</sup> respondent.**

**Mr. Kenjel, instructed by Nabibia & Company,  
Advocates for the 3<sup>rd</sup> and 4<sup>th</sup> respondents.**