

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**CIVIL APPEAL NO. E019 OF 2025**

**COUNTY GOVERNMENT OF BUSIA.....1<sup>ST</sup>**  
**APPELLANT**  
**GYPSON WAFULA.....2<sup>ND</sup> APPELLANT**  
**VERSUS**  
**JOHN OTIENGI OKISAI.....1<sup>ST</sup>**  
**RESPONDENT**  
**JOE KIRWA TANUI.....2<sup>ND</sup> RESPONDENT**  
**DISMAS EGESA.....3<sup>RD</sup> RESPONDENT**

**(Appeal from the ruling and order, of Hon. Kassim Akida, of  
21<sup>st</sup> March 2025, in Busia HCJR No. 5 of 2019)**

**JUDGEMENT**

1. I wonder whether I would have jurisdiction, sitting as High Court, to handle an appeal arising from a decision of the High Court, for the decision, against which this appeal is filed, was made in a High Court cause, in Busia HCJR No. 5 of 2019. The decision of the High Court can only be challenged at the Court of Appeal on appeal.
2. I am, of course, alive to the fact that the decision being challenged is not that of a Judge of the High Court, which would attract an appeal to the Court of Appeal, but that of a Deputy Registrar of the High Court. However, a decision of a Deputy Registrar of the High Court would still be a decision of the High Court, presided over by the Deputy Registrar, in exercise of the jurisdiction conferred upon a Deputy Registrar by the relevant law.
3. The Deputy Registrar does not sit in the High Court as a magistrate, or a lower court within the High Court, but as an officer of the High Court, and the decision that he makes

would not be appealable to the same High Court where he sits as Deputy Registrar, it can only be challenged by way of an interlocutory application before a Judge of the High Court, within the cause where the order was made.

4. What should happen, upon a party being dissatisfied with a decision of the Deputy Registrar of the High Court, seized of a taxation dispute, for instance, with respect to High Court proceedings, is not to lodge an appeal in a new cause at the High Court, but to file a reference, within the cause where the impugned decision was made, to obviate lodging an appeal, in a new cause file, at the High Court, over a decision of the High Court, in a separate High Court cause. That would be untidy.
5. The reference route was designed to avoid that sort of untidiness, where there is a substantive JR cause, or any other cause, at the High Court, such as Busia HCJR No. 5 of 2019, which gives rise to a decision of the High Court, in that Busia HCJR No. 5 of 2019, which is then appealed against at the High Court in Busia HCCA No. E019 of 2025. Conceptually, that should never happen.
6. The appellant should have filed an interlocutory reference, within Busia HCJR No. 5 of 2019, to avoid appearing to be litigating a JR cause in the High Court, and an appeal at the same High Court, arising from the JR proceedings.
7. I am alive to the fact that a reference to the High Court, from a decision of a Deputy Registrar is, for all practical purposes, an appeal against the decision of a judicial officer who serves at a rank below a Judge of the High Court. However, the decisions of the Deputy Registrar remain decisions of the High Court. They cannot be challenged substantively in an appeal to the High Court, but by way of reference, within the cause, or as interlocutory proceedings, within the High Court cause, which gave rise to the impugned decision.

8. The appeal herein should not have been filed as a substantive appeal, but as a reference within Busia HCJR No. 5 of 2019, to be handled by the Judge as an interlocutory matter, so that the decision of the Judge, from the reference or the interlocutory application would be appealable to the Court of Appeal.
9. I do not have jurisdiction to handle the appeal herein, in the manner that it was framed and initiated. The appeal is incompetent, and I hereby dismiss the same. The respondent shall have the costs.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN  
CHAMBERS, AT BUSIA ON THIS 24<sup>TH</sup> DAY OF FEBRUARY  
2026.**

**WM MUSYOKA  
JUDGE**

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

**Advocates**

**Mr. Omboko, instructed by the Office of the County Attorney,  
for the appellant.**

**Mr. Ashioya, instructed by Ashioya & Company, Advocates for  
the respondent.**