



REPUBLIC OF KENYA



Elijah v Omondi (Civil Appeal E032 of 2024) [2025] KEHC 3620 (KLR) (24 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3620 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E032 OF 2024
WM MUSYOKA, J
MARCH 24, 2025**

BETWEEN

ANYOKA OGOTI ELIJAH APPELLANT

AND

SILAS GEORGE OMONDI RESPONDENT

(Being an appeal arising from orders made in a ruling by Hon. E Serem, Resident Magistrate, RM, in Busia CMCCC No. 109 of 2022, delivered on 3rd July 2024)

RULING

1. I am called upon to determine an undated application, filed herein on an unknown date. It seeks stay of proceedings in Busia CMCCCs Nos. 109, 110, 111, 112, 113, 122 and 345 of 2024, pending the hearing and determination of the appeal herein.
2. The affidavit, sworn in support, is by Maureen Tesot, the Advocate for the appellant. It is averred that the suit in Busia CMCCC No. 109 of 2022 had been chosen, on 25th March 2024, by the trial court, as the test case on liability, in a series where other suits were pending, against the same defendant, the appellant herein, arising from the same accident. The other suits were Busia CMCCCs Nos. 110, 111, 112, 113, 122 and 345 of 2024.
3. The suit, in Busia CMCCC No. 109 of 2022, came up on 3rd July 2024, for defence hearing, and the appellant sought adjournment, on grounds that he had filed an application dated 5th June 2024, which he wanted heard ahead of the defence hearing, for the parties were negotiating on throwaway costs to reopen the respondent's case, for cross-examination of the police. The adjournment sought was denied, and the trial court proceeded to close the defence case, and to allocate a date for mention for submissions.
4. Arising from that, the appellant filed the instant appeal. It is averred that, should the stay in Busia CMCCCs Nos. 110, 111, 112, 113, 122 and 345 of 2024 not be granted, the trial court would proceed



to hear and determine the matters, which would render the instant appeal nugatory. It is averred that the respondent would not be prejudiced.

5. There is a response by Okwaro Winnie Anono, the Advocate for the respondent, sworn on 26th July 2024. It is averred that the application is frivolous, and the appellant is blamed for what befell him. It is pointed out that the application, dated 5th June 2024, was lodged in court less than an hour before the court was due to hear the matter, and when the matter was called out the said application was not even in the court record. It is also pointed out that no good reasons had been given for not availing witnesses. The appellant is accused of having caused many adjournments in the matter, and of being indolent.
6. Although no directions were given, for the canvassing of the application by way of written submissions, the appellant did file written submissions, dated 18th October 2024. The respondent indicated, on 10th February 2025, that he would not be filing written submissions. I have read through the submissions by the appellant, and I have taken note of the arguments made.
7. The application invites me to make orders to stay proceedings in Busia CMCCCs Nos. 109, 110, 111, 112, 113, 122 and 345 of 2024, pending the hearing and determination of the instant appeal. The appeal only relates to Busia CMCCC No. 109 of 2022. The connection between Busia CMCCC No. 109 of 2022 and the other cases, that is Busia CMCCCs Nos. 110, 111, 112, 113, 122 and 345 of 2024, appears to be the alleged order of 25th March 2024, which purportedly made Busia CMCCC No. 109 of 2022 the test case for liability, for the rest of the cases. I talk of an alleged order, as a copy of that order has not been exhibited to the instant application. I note that the respondent has not conceded to existence of that order, and I have no way of vouching for its existence. I cannot possibly grant orders based on an order that has not been established to exist.
8. Regarding Busia CMCCC No. 109 of 2022, I note that the matter proceeded on 29th May 2024, when the respondent's case was closed, and a date was given for hearing on 5th June 2024. The appellant then filed an application, dated 5th June 2024, to have those orders vacated, and, on that date, the case was coming up for defence hearing, when the defence was closed by the court. The appellant has not sought to explain why that was so, but the respondent states that it was because the appellant had no witnesses.
9. The original trial court record is not before me, and the record of appeal has not been filed. So, I have no way of determining what exactly transpired on 5th June 2024. I shall give the appellant the benefit of doubt, with respect to the events of 5th June 2024, so that whatever happened can be considered at the hearing of the appeal.
10. Consequently, I shall allow the undated application, to the extent of granting stay of proceedings in Busia CMCCC No. 109 of 2022, pending appeal. The Deputy Registrar shall call for the original trial court records, while the appellant shall file and serve the record of appeal in the next 14 days. The matter shall be mentioned on 28th April 2025. Orders accordingly.

DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 24TH DAY OF MARCH 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Wesonga, instructed by Kimondo Gachoka & Company, Advocates for the appellant.

Ms. Anono instructed by Mukisu & Company, Advocates for the respondent.

