



REPUBLIC OF KENYA



Asuka v Asiba (Civil Appeal E044 of 2024) [2025] KEHC 4947 (KLR) (25 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4947 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E044 OF 2024**

WM MUSYOKA, J

APRIL 25, 2025

BETWEEN

SIMON ASUKA APPELLANT

AND

LINUS OUMA ASIBA RESPONDENT

(An appeal arising from orders made in the ruling by Hon. Kassim Akida, Resident Magistrate, RM, delivered on 29th August 2024, in Busia SCCC No. E016 of 2023)

RULING

1. This ruling is in respect of an application, dated 12th September 2024. It seeks stay of execution in Busia SCCC No. E016 of 2023, pending appeal. What is sought to be stayed is not identified in the application, for the application mentions a ruling delivered on 29th August 2024, while the affidavit mentions another ruling delivered on 13th July 2024. The application is incredibly deficient of information, which is surprising, given that the applicant seeks stoppage of a due court process, which should only be done on concrete information, calling for material disclosure. A court does not exercise discretion willy nilly, but based on material which persuades that a good ground exists for exercise of that discretion in favour of the applicant.
2. The respondent has opposed the application, in a detailed affidavit, sworn on 11th October 2024. The respondent does a lot better, in terms of placing before the court material that would be of assistance, in terms of evaluating the case. The affidavit reveals that an application, dated 3rd July 2024, was dismissed on 29th August 2024. It is disclosed that the memorandum of appeal herein, dated 2nd September 2024, seeks the setting aside of those orders of 29th August 2024. The application, the subject of the ruling of 29th August 2024, was for stay of execution of warrants of arrest and the setting aside of a consent judgement entered on 18th December 2023. It is averred that the appeal herein does not challenge the said consent orders, for there is no prayer in the memorandum of appeal on that.
3. Should I grant the prayers sought? I do not think so.



4. Firstly, the prayers in the application are vague, for they do not identify what is sought to be stayed. It is a prayer for “stay of execution in Busia SCCCOM. E016/2023 ... pending the hearing and determination of the Appeal herein.” Stay of execution, in the civil process is about execution of a court order or decree. An application for stay of execution should be clear on the order or decree that is targeted for stay. It should not be for the court to speculate on what the party seeks. Pleading should always be clear and precise. I have no idea what the applicant is asking me to stay execution of, and I shall refrain from speculating.
5. Secondly, the memorandum of appeal herein is on orders that were made on 29th August 2024. Those orders are incapable of being executed, for they merely dismissed an application. The appeal, going by the prayers in the memorandum of appeal, is about the dismissal order of 29th August 2024 being set aside. One would wonder about how the appellant would benefit from the setting aside of that dismissal order. So, what should happen after that dismissal order is set aside? We would be left with the application, upon which the orders were premised, pending, awaiting determination afresh.
6. Thirdly, the only executable order of the trial court is the consent judgement of 18th December 2023. The appeal does not challenge that consent judgement, when looked at from the perspective of the prayers sought in the memorandum of appeal. It is not about that judgement. I agree with the respondent, should the instant appeal be allowed, if at all, the said consent judgement would remain intact.
7. The application, dated 12th September 2024, cannot at all be merited, in view of what I have discussed above. It is for dismissal, and I hereby dismiss it. On costs, as the application is so wanting, I feel the respondent should be awarded costs, for having to respond to such a hopelessly deficient application. The respondent shall have the costs of the application. The appeal shall be mentioned on 14th May 2025, for directions on its disposal. Orders accordingly.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 25TH DAY OF APRIL 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Mr. Tony Omeri, instructed by Omeri & Associates, Advocates for the appellant.

Mr. Gabriel Fwaya, instructed by Fwaya Masakhwe Were & Company, Advocates for the respondent.

