



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Sewe v Nabega & another (Suing as the Legal Representative of the Estate of Salim Anjimbi Deceased) (Civil Appeal 2 of 2022) [2024] KEHC 2035 (KLR) (29 February 2024) (Ruling)

Neutral citation: [2024] KEHC 2035 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL APPEAL 2 OF 2022
JN KAMAU, J
FEBRUARY 29, 2024**

BETWEEN

DOROTHY ADHIAMBO SEWE APPELLANT

AND

ABDUL AZIZ ANIIMBI NABEGA 1ST RESPONDENT

SYLVIA REHEMA OTIENO 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SALIM
ANJIMBI DECEASED**

(Being an appeal from the Judgment and Decree of Hon M. Makena (RM) delivered at Vihiga in Principal Magistrate's Court Case No 81 of 2020 on 23rd February 2022)

RULING

1. Musyoka J was initially seized of this matter. On 25th January 2023, he directed that he would deliver his Ruling in respect of the Appellant's Notice of Motion dated 23rd March 2022 and filed on 24th March 2022 on 31st March 2023.
2. A perusal of the court records showed that he did not deliver the said Ruling on the said date. He delivered the same on 2nd June 2023.
3. The proceedings of 2nd June 2023 read as follows:-

“2/6/23

Musyoka J.

Erick/CA

N/A/by the parties



Court

Ruling delivered, dated and signed in open court.”

4. He further directed that the matter be placed before the Deputy Registrar Vihiga High Court for the progression of the Appeal herein.
5. On 10th November 2023, the High Court Registry listed the matter herein for mention before this court on 17th January 2024.
6. On the said date, both parties informed it that they had filed their Written Submissions in respect of the aforesaid Appellant’s Notice of Motion application and sought its directions as the Learned Judge was no longer handling matters from High Court Vihiga and they had already filed their respective Written Submissions. This court therefore reserved its decision in respect of the aforesaid application for 29th February 2024.
7. However, at the time of writing its decision, it came to the attention of this court that the Learned Judge delivered his decision in respect of the aforesaid Notice of Motion application on 2nd June 2023.
8. As a judge of equal and competent jurisdiction has already delivered his decision herein, this court could not give a decision based on the same facts. In that regard, the matter was res judicata.
9. Having said so, it did appear to this court that there was a possibility that the parties were not aware that the Learned Judge had already delivered the aforesaid decision. There was no evidence in the court file showing if the parties herein were given notice of when the Learned Judge was to deliver his decision. Their request to this court to write a decision in respect of the aforesaid Notice of Motion application therefore appeared inadvertent and was not intended to mislead this court.

Disposition

10. For the foregoing reasons, the upshot of this court’s decision was that in view of the fact that there was nothing to determine in this matter, the Ruling of the Appellant’s Notice of Motion application dated 23rd March 2022 and filed on 24th March 2023 having been delivered by Musyoka Judge on 2nd June 2023, it is hereby directed that the lower court file be availed forthwith for the hearing and determination of the Appeal herein.
11. It is hereby directed that the matter will be mentioned on 25th April 2024 to confirm compliance and/or for further orders and/or directions.
12. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 29TH DAY OF FEBRUARY 2024

J. KAMAU

JUDGE

