



REPUBLIC OF KENYA



**KENYA LAW**  
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**Charles v Okuku (Civil Appeal E007 of 2020)  
[2024] KEHC 2558 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2558 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL E007 OF 2020  
WM MUSYOKA, J  
MARCH 15, 2024**

**BETWEEN**

**DINDI OJWANG CHARLES ..... APPELLANT**

**AND**

**SYLVESTER OUMA OKUKU ..... RESPONDENT**

*(An appeal arising from the judgement of Hon. TA Madowo, Resident Magistrate, RM, delivered on 6th October 2020, in Busia CMCCC No. 71 of 2018)*

**RULING**

1. The memorandum of appeal that originated this appeal cause, dated 23<sup>rd</sup> October 2020, was lodged herein on even date. The respondent then filed a memorandum of appearance and grounds of opposition, dated 16<sup>th</sup> November 2020, on 17<sup>th</sup> November 2020. That was needless, as the procedural law does not provide for the filing of any such documents. Anyhow, a record of appeal, dated 8<sup>th</sup> June 2021, was filed herein on 9<sup>th</sup> June 2021.
2. After the filing on 9<sup>th</sup> June 2021, the appellant went to sleep, until 2023, when he was prompted by the court. I see that Ms. Sibika, for the appellant, appeared before the Deputy Registrar on 22<sup>nd</sup> August 2023, when she indicated to the court that the appellant had filed a record of appeal. The Deputy Registrar then minuted the matter for mention on 17<sup>th</sup> October 2023, for the purpose of obtaining the original trial court records. A mention for that purpose happened on 14<sup>th</sup> November 2023, when it was established that the trial court records were yet to be availed, and a date was given for mention before the Judge on 5<sup>th</sup> February 2024, for admission of the appeal.
3. In the meantime, the respondent lodged an application herein, on 6<sup>th</sup> December 2023, dated 20<sup>th</sup> November 2023, seeking dismissal of the appeal for want of prosecution. The appellant responded to it by way of an affidavit, sworn on 22<sup>nd</sup> January 2024, explaining that the matter was due to be mentioned before the Judge for directions on 5<sup>th</sup> February 2024.



4. Should the matter be dismissed for want of prosecution? I do not think so. As at the time the application, dated 20<sup>th</sup> November 2023, was being filed on 6<sup>th</sup> December 2023, the Deputy Registrar had allocated this matter a date for mention before the Judge, for 5<sup>th</sup> February 2024. It cannot then be said that the appellant was not active with the matter. Indeed, on 6<sup>th</sup> December 2023, when filing his application, the respondent should have realised that the appellant had an appointment before the Judge on 5<sup>th</sup> February 2024, for admission of the appeal, and should have refrained from filing his application. In the given circumstances, the filing of the said application was in abuse of court process, and I accordingly dismiss the same, with costs to the appellant.
5. To move this matter forward, I hereby admit the appeal herein. I hereby direct that the said appeal be canvassed by way of written submissions, to be filed and exchanged within 21 days. The matter shall be mentioned on 22<sup>nd</sup> April 2024, for receipt of the written submissions, and for allocation of a date for judgement. In the meantime, the Deputy Registrar shall ensure that the trial court records, in Busia CMCCC No. 71 of 2018, are placed in this file by then. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 15<sup>TH</sup> DAY OF MARCH 2024**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Egesa, instructed by Bogonko Otanga & Company, Advocates for the appellant.

Mr. Luchivya, instructed by Marisio Luchivya & Company, Advocates for the respondent.

