



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sango Trading Company Limited & 8 others v Jirongo & 2 others (Civil Case 482 of 2006)  
[2021] KEHC 432 (KLR) (Commercial and Tax) (16 December 2021) (Ruling)**

Neutral citation: [2021] KEHC 432 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 482 OF 2006  
WA OKWANY, J  
DECEMBER 16, 2021**

**BETWEEN**

**SANGO TRADING COMPANY LIMITED ..... 1<sup>ST</sup> PLAINTIFF  
MASOLE LIMITED ..... 2<sup>ND</sup> PLAINTIFF  
SAMAN DEVELOPERS LIMITED ..... 3<sup>RD</sup> PLAINTIFF  
BAIA ENTERPRISES LIMITED ..... 4<sup>TH</sup> PLAINTIFF  
MARINO ENTERPRISES LIMITED ..... 5<sup>TH</sup> PLAINTIFF  
GILERA LTD ..... 6<sup>TH</sup> PLAINTIFF  
KOIT DEVELOPERS LIMITED ..... 7<sup>TH</sup> PLAINTIFF  
KENETE LIMITED ..... 8<sup>TH</sup> PLAINTIFF  
LINSALA ENTERPRISES ..... 9<sup>TH</sup> PLAINTIFF**

**AND**

**CYRUS JIRONGO ..... 1<sup>ST</sup> DEFENDANT  
BETHLEHEM TRADING LIMITED ..... 2<sup>ND</sup> DEFENDANT  
NATIONAL BANK OF KENYA ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Through the application dated 18<sup>th</sup> May 2021, the 1<sup>st</sup> and 2<sup>nd</sup> defendants seek orders for the reconstruction of the court file. The application is supported by the affidavit of the applicants' advocate Mr. Koyyoko Bernard and is premised on the grounds that: -



1. THAT this file abated sometime in 2007 after the plaintiffs failed to furnish security of costs for the 3<sup>rd</sup> defendant in form of a bank guarantee for Kshs. 5 Million.
  2. THAT this Honourable Court dismissed this suit vide an order issued by Lady Justice Okwengu on 9<sup>th</sup> July 2007.
  3. THAT the suit file then became inactive and was probably closed by the court registry.
  4. THAT sometime in the year 2014 the plaintiffs filed a new suit HCCC No. 228 OF 2014 Masole Enterprises Limited and 7 Others vs S. K. Jirongo & Another.
  5. THAT the latter suit is based on the same facts, parties and contracts as this suit.
  6. THAT the applicant verily believes that the latter suit is an abuse of the court process.
  7. THAT the plaintiffs have not paid the costs the defendants incurred in HCC 482 OF 2006 and reconstruction of the file is necessary to enable the defendants tax and recover their costs.
  8. It is in the interest of justice that the file herein be reconstructed to enable parties reach a just and fair determination in both this suit and *HCC 228 of 2014, Masole Enterprise Limited & 7 Others V Shakhhalaga Khwa Jirongo & Another*.
  9. The court registry has confirmed that the trial file court file cannot be traced and therefore authorized the reconstruction of the file.
2. The 3<sup>rd</sup> defendant reacted to the application through the replying affidavit of its Director of Legal Services Mr. Samuel Mundia who confirms that this case was concluded in 2007 but that a search conducted in the archives yielded a ruling showing that the suit was dismissed with costs to the 3<sup>rd</sup> defendant. He avers that apart from the copy of the ruling and decree retrieved from the archives, the 3<sup>rd</sup> defendant does not have any further documents in respect to the case.
  3. The 3<sup>rd</sup> Defendant opposes the reopening of the case almost 14 years after it was dismissed while arguing that it no longer has any other documents relating to this matter.
  4. At the hearing of the application, Mr. Koyyoko learned counsel for the applicants, submitted that the applicants seek the reconstruction of the court file because the plaintiffs have filed another suit against them being HCCC 228 of 2014 and that a question has arisen in the said suit on whether the matter is res judicata. According to the applicants, the reconstruction of the court file will be necessary in order to determine the issues raised in the subsequent suit. The applicants submitted that the reconstruction of the court file will not prejudice any party.
  5. The 3<sup>rd</sup> defendant however opposed the reconstruction of the file on the basis that the suit was concluded way back in 2007 after which it destroyed its records 5 years thereafter. The 3<sup>rd</sup> defendant's case was that save for the copy of the decree that it was able to obtain from the archives, it does not have any other documents to submit to court for the purposes of reconstructing the court file.
  6. I have carefully considered the instant application, the replying affidavit and the parties' submissions. I find that this is a straight forward matter where a party seeks the reconstruction of a court file which the court's Deputy Registrar has confirmed cannot be traced. I note that the reasons advanced by the applicants for seeking the reconstruction of the file are plausible. The applicants explained that they do not wish to re-open the case as was suggested by the 3<sup>rd</sup> defendant.
  7. My finding is that the applicants have made out a case for the granting of the orders sought in the instant application which I hereby allow as prayed with no orders as to costs.



**Dated, signed and delivered via Microsoft Teams at Nairobi this 16<sup>th</sup> day of December 2021 in view of the declaration of measures restricting court operations due to Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on the 17<sup>th</sup> April 2020.**

**W. A. OKWANY**

**JUDGE**

**In the presence of: -**

Mr. Fraser for 3<sup>rd</sup> Defendant

Mr. Koyoko for 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants

Court Assistant: Margaret

