



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**Civil Case 153 of 1998**

**MUTURI KIMANI**

**MARTHA WANJIRU.....PLAINTIFFS**

**VERSUS**

**DOUGLAS MWANGI KIMANI.....DEFENDANT**

**RULING**

The Plaintiffs state that they filed an application dated 20<sup>th</sup> July 2009 which was heard by this Court and orders given on 15<sup>th</sup> June 2010, but that the said orders could not be extracted because the court file went missing from the court registry soon thereafter. The Plaintiffs further state that the suit filed herein had been heard and finalised, and they were trying to execute the judgment through the said application. The Plaintiffs then filed an application dated 2<sup>nd</sup> March 2011 for reconstruction of the court file, which orders were duly given on 25<sup>th</sup> July 2011 by the Honourable Mrs. Rose Ougo, the Senior Principal Deputy Registrar (as she then was).

As the court record is missing, the Plaintiffs at a hearing on 14<sup>th</sup> November 2011 requested that the said application dated 20<sup>th</sup> July 2009 be heard again and determined on the basis of the reconstructed court file. After consideration of the Plaintiff's submissions, I find that I must first determine the preliminary issue of whether this Court can proceed to hear the application during the pendency of orders given on the same application by this Court. I find on this issue that unless the parties to the suit filed herein agree by way of consent to set aside the said orders, or the Plaintiff applies to have the said orders set aside under Order 45 of the Civil Procedure Rules of 2010 or other applicable provisions of the law, this Court has no jurisdiction to proceed with the determination of the application dated 20<sup>th</sup> July 2009.

Having perused the reconstructed court file, I do however note that the Plaintiff is at liberty to proceed in the Court of Appeal under Order 42 (6) (1) of the Civil Procedure Rules with regard to the setting aside of the stay orders given by this Court, or under Order 24 of the Civil Procedure Rules as regards the abatement of the appeal filed against the judgment given by this Court.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this 25<sup>th</sup> day of January, 2012.

**P. NYAMWEYA**

**JUDGE**