



REPUBLIC OF KENYA



**M’Mwongera v Chege & 3 others (Miscellaneous Civil Application
E37 of 2021) [2022] KEELC 13443 (KLR) (12 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13443 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E37 OF 2021
CK NZILI, J
OCTOBER 12, 2022**

BETWEEN

M’KUNYUA M’MWONGERA APPLICANT

AND

NJERI CHEGE 1ST RESPONDENT

JOHN KIMANI CHEGE 2ND RESPONDENT

RICHARD KAMAU CHEGE 3RD RESPONDENT

WANJIRU CHEGE 4TH RESPONDENT

RULING

1. The court is asked to order for the reconstruction of Meru ELC No 35 of 2012 *M’Ikunyua M’Mwongera v Njeri wa Chege & 3 others* allegedly said to be misplaced. The application is supported by two affidavits sworn by Gatari Ringera advocate on the even date and April 26, 2022.
2. The grounds are that the suit was heard and determined on June 26, 2013 and that the decree cannot be executed for lack of the original court file.
3. The applicant has attached copies of the pleadings, the judgment, a register from Tigania law courts and various correspondence seeking for updates about the court file.
4. The respondents are opposed to the application through an affidavit of Wanjiru Chege, the 4th respondent sworn on June 9, 2022. The grounds of opposition are that they were wrongly sued since they are not the registered owners of the suitland. That the application is an abuse of the court process based on half-truths and lacking merits.



5. Mr. Gatari Ringera learned counsel for the applicant reiterated that the deputy registrar has not responded to inquiries over the whereabouts of the original court file despite service with the court's order and that the replying affidavit herein does not answer to the application.
6. On their part, the respondents submitted that they were not aware of the suit and wondered how it came about.
7. The guidelines on the manner to handle missing court files are contained at Pages 32-34 of the *High Court Registry Operations Manual 2nd Edition*.
8. In this application, the applicant has attached copies of letters showing the efforts he has made in trying to trace the original court file which have proved unsuccessful.
9. He now invokes the inherent jurisdiction of this court under sections 1A & 1B of the *Civil Procedure Act* which speak to the just, expeditious, proportionate and affordable resolution of civil disputes.
10. The deputy registrar is required under the manual to issue a certificate to confirm the loss of the original court file and recommend for reconstruction of the file. Even though the applicant says he has initiated the process, there is nothing from the deputy registrar confirming the original file as lost or misplaced.
11. Be that as it may, I have no reason to doubt the applicant. A party should not therefore continue to suffer due to non-compliance with the internal mechanisms under the registry manual.
12. I therefore find it is in the interest of justice to allow the application. The deputy registrar shall proceed to open the skeleton file in line with the registry manual.

There will be no order as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 12TH DAY OF OCTOBER, 2022.

In presence of:

Gatari Ringera Advocate for applicant

Respondents in person

C/A: Kananu

HON. C.K. NZILI

ELC JUDGE

