



Ogola & another v Rapemo & another (Environment and Land Miscellaneous Application E017 of 2024) [2025] KEELC 1077 (KLR) (5 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1077 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E017 OF 2024**

M SILA, J

MARCH 5, 2025

BETWEEN

SYLVESTER OWUOR OGOLA 1ST APPLICANT

RICHARD ODERAO OGOLA 2ND APPLICANT

AND

OURE RAPEMO 1ST RESPONDENT

MWAI RAPEMO 2ND RESPONDENT

RULING

(Application for reconstruction of a file closed more than 50 years ago; need to have verification of the documentation from the parties or person who can vouch for the documents presented for reconstruction; in the instance of the case, no affidavit from any of the parties or persons who handled the case; not possible for court to vouch for the documentation presented; application dismissed)

1. This miscellaneous cause was commenced through a Chamber Summons application dated 20 June 2024 and said to be brought pursuant to the provisions of Section 3A of the *Civil Procedure Act*. The applicant wants this court to order the reconstruction of the court file Kisii High Court Land Appeal No. 2 of 1974; that the reconstruction be on the basis of copies supplied by the applicant; that upon reconstruction the file be kept in a strong room; and that thereafter the applicant be supplied with certified copies thereof. The application is based on grounds that on 10 February 2021, the applicants sought to be supplied with certified copies of the subject proceedings and was eventually informed that the file could not be traced, and further, that the applicant needs the proceedings to conduct another suit, being Homa Bay CM Land Case No. E012 of 2022. To the application, the applicants annexed a judgment dated 11 July 1974 which is the only proceeding annexed.
2. I have considered the application.



3. I have not found a precise provision of the law that directs how missing or misplaced files are to be reconstructed though of course Section 3A of the *Civil Procedure Act*, which has been cited, appears broad enough to cover any gaps in law so as to enable the court make such orders that meet the ends of justice.
4. In reconstruction, what is important is that the court is satisfied that the documentation provided truly reflects the pleadings, proceedings and/or orders made in the suit. That in my opinion can only be affirmed by the parties themselves, or an officer of the court privy to the matter, or from some other material that support the documentation. Apart from the foregoing, there must also be purpose to be served by reconstructing a file such as to proceed for execution or make applications within the file.
5. In our case, I see that what is sought to be reconstructed is a Land Appeal Case No. 2 of 1974 that was in the Resident Magistrates' Court at Kisii and I gather this based on the single document presented which appears to be a judgment. That is a matter that was in court more than 50 years ago. I have seen a document supposedly from the Judiciary Service Desk Team that the file cannot be traced, which is not surprising given the age of the matter ; so let us assume that this file is indeed lost or cannot be traced.
6. The sole document presented, as I have pointed out is that judgment, and from it I see that the parties were Mwai Ratemo and Oure Ratemo as appellants and one Patrice Ogola as respondent. The supporting affidavit herein is sworn by Richard Odera Ogola who was not a party to that case. He has introduced himself as administrator of the estate of Patrice Ogola who was the respondent and states that he has full knowledge of the case. It would have helped if he shared how he has full knowledge of the case yet he was not the actual party in the case but he has not. In essence, I have nothing from the parties themselves to verify that indeed what is presented is a true judgment of the court. The parties appear to have been acting in person and it is only them who can vouch on the veracity of the document.
7. If the document is to be believed, I see that it shows that the appeal was presided over by one M.O.N Odera, Resident Magistrate. He has not sworn any affidavit to support the document said to be his judgment. In essence, what I am saying is that I have no evidence from any person who actively participated in the case to support the claim that what is being presented is truly a judgment of the court in Land Appeal Case No. 2 of 1974. I cannot therefore say with conviction that this is a true judgment of the court as presented. In light of that I am unable to allow the reconstruction of the file based on what has been presented before me. It would be too risky to allow reconstruction without any of the persons who directly dealt with the matter affirming the documents, otherwise a window can be opened for all manner of fraudsters to seek reconstruction and certification of documents that the court itself cannot vouch for.
8. For the above reasons, I am afraid that I cannot allow the application and it is dismissed.
9. There will be no orders as to costs.
10. Orders accordingly.

DATED AND DELIVERED THIS 5TH DAY OF MARCH 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT KISII

Delivered in the presence of :

No appearance on part of Ms. Nyarige for the applicants but

Mr. Sylvester Owuor Ogola – Applicant present



N/A for the respondent

Court Assistant – Michael Oyuko

