



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC PETITION NO. E006 OF 2020

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER
ARTICLE 40 OF THE CONSTITUTION OF KENYA 2010**

AND

IN THE MATTER OF ARTICLES 22, 23 AND 165 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF SECTIONS 26A, 27 AND 28 OF THE LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA

AND

AND IN THE MATTER OF SECTION 24, 25, 78 AND 79 OF THE LAND REGISTRATION ACT NO. 3 OF 2012

AND

AND IN THE MATTER OF THE LAND REGISTRATION ACT AND THE LAND ACT

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS)
PRACTICE AND PROCEDURE RULES 2013, SECTION 4**

BETWEEN

FRANKLINE MURIIRA M'NKANATA.....PETITIONER

VERSUS

THE ADJUDICATION OFFICER, RUIRI/RWARERA ADJUDICATION SECTION.....1ST RESPONDENT

THE LAND REGISTRAR MERU CENTRAL DISTRICT.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL..... 3RD RESPONDENT

AND

ANNAH MWARI MUTUMA1ST INTERESTED PARTY

JACOB KITHAE MAKUNYU2ND INTERESTED PARTY

GACANI MBERIA3RD INTERESTED PARTY

RULING

1. Before me is a notice of motion dated 19/01/2021 seeking orders to reinstate the application dated 28.10.2020 which was dismissed on 19.1.2021. The application is based on the grounds on the face of it and on the supporting affidavit of the applicant. He avers that the earlier application was scheduled for hearing on 19.1.2021. He and his advocate were of the understanding that the matter would be heard in open court. However, the matter was conducted virtually and dismissed.

2. The application is unopposed. This court has discretion to set aside a judgment or order. The exercise of this discretion is intended to avoid injustice or hardship resulting from an accident, inadvertence or excusable mistake or error but not to assist a person who deliberately seeks to obstruct or delay the course of justice, See **Shah vs Mbogo & Another (1967) EA 116.**

3. I have considered that the current application was filed promptly. Further the confusion in attending open court instead of virtually may be considered as an excusable mistake. In the circumstances, I proceed to allow the application of 19.1.2021 with no orders as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 21ST DAY OF APRIL, 2021 IN PRESENCE OF:

C/A: Kananu

D. Maranya for petitioner

HON. LUCY. N. MBUGUA

ELC JUDGE