



**Njuguna v Okworo (Environment and Land Miscellaneous Application  
27 of 2023) [2023] KEELC 19873 (KLR) (20 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19873 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 27 OF 2023  
FM NJOROGE, J  
SEPTEMBER 20, 2023**

**BETWEEN**

**HANNAH WAIRIMU NJUGUNA ..... APPLICANT**

**AND**

**JOASH MASESE OKWORO ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the applicant's notice of motion application dated May 17, 2023 which is expressed to be brought under order 51 rule 1 of the [Civil Procedure Rules](#) and section 3A of the [Civil Procedure Act](#) and which sought the following orders;
  1. Spent
  2. That the court be pleased to order that a skeleton file be constituted in respect of ELC No 174 of 2012 Hannah Njuguna v Joash Masese Okworo.
  3. That the plaintiff do furnish the court with relevant documents to construct the file.
  4. That the costs of this application be provided for.
2. The application is supported by the affidavit of the applicant Hannah Wairimu Njuguna sworn on May 17, 2023. The grounds on the face of the application and the supporting affidavit are that she filed a plaint dated August 10, 2009 against the respondent seeking among other orders a perpetual injunction restraining the respondent from interfering with the parcel of land known as title No 12783/51 Farm Nakuru; that the matter was initially filed in Nakuru Magistrate's Court before it was transferred to the Environment and Land Court; that the respondent had entered appearance and filed a defence; that her advocates filed witness statements and list of documents; that the respondent also filed compliance documents; that the matter came up for hearing of the plaintiff's case on December 9, 2021 where she testified and closed her case; that the hearing of the defence case was scheduled for



March 2, 2022; that on March 2, 2022 the matter could not proceed because the defendant had a medical emergency; that the hearing was rescheduled to June 21, 2022; that on the said date a fresh hearing date was given for the November 22, 2022 on which date the court file was not availed; that from the said date, the file cannot be traced despite visiting the registry repeatedly; that her advocates on record had a meeting with the Deputy Registrar over the missing file but to date it has not been traced and that it is in the interest of justice that the application be allowed as prayed.

3. The respondent did not oppose the application.

### **Analysis And Determination**

4. After considering the application, the only issue that arises for determination is whether the court should order for a skeleton file to be constituted in respect of ELC No 174 of 2012 Hannah Wairimu Njuguna v Joash Masese Okworo.

5. The court in the case of *Abdul Karim Omar v Stephen Ngumbau Kitbuka* [2017 eKLR considered the process of reconstruction of a lost filed and stated as follows:

“23. In the 2<sup>nd</sup> Edition of the High Court of Kenya Registry Operation Manual at pages 33-34, paragraph 4.6 the following guidelines on tracing and reconstruction of missing files are found: -

“If a file is missing, the Registry will take the following steps: -

- a) The Registry Supervisor checks the file movement register to identify the person in whose possession the file was last recorded. The Supervisor instructs him/her to trace the file.
- b) If the file is not traced, the Registry Supervisor circulates a memo to all staff in the Station/ Registry asking them to check whether the file is in their possession. If the file is not found within 24 hours, the supervisor will notify the Deputy Registrar.
- c) The Deputy Registrar then initiates a special search.
- d) If the file is not traced after this first search, the Registry Supervisor writes the words ‘original file missing’, in pencil, on the relevant case register.
- e) The Registry Supervisor then enters the details of the missing file in the register of missing files which is maintained by the Registry Supervisor.
- f) After a fruitless search of 14 days, the Deputy Registrar issues a certificate to confirm the loss and recommends the reconstruction of the file.
- g) Parties are informed of the non-availability of the file in writing by the Deputy Registrar with a recommendation for reconstruction.
- h) In the event that a missing file is traced, the date of recovery is recorded in the case register and its availability is communicated to the parties concerned by the Deputy Registrar within 24 hours of its tracing. A certificate confirming the recovery is issued.
- i) The file once traced is merged with any skeleton file that may have been opened.”

6. The applicant in the present matter alleged that when the matter came up for defence hearing on November 23, 2022 the file could not be traced. The applicant attached to her application various email correspondences between her advocates and the Deputy Registrar that allude to a meeting that



was to be held on April 12, 2023. From the annexed documents it is not clear whether the said meeting was held and what the outcome was, if any.

7. The court in the case of *Peter Wambugu Kariuki & 16 others v Kenya Agricultural Research Institute* [2020] eKLR held as follows;

“At this stage, the court registrar or the appointed Deputy Registrar for the court...being the official custodian of all court files must confirm that upon request by the parties to file documents under Petition 2 of 2013 *Peter Wambugu Kariuki & 16 others v Kenya Agricultural Research Institute* this file cannot be traced and or has been misplaced as upon such written communication then the parties can rightly be justified in seeking for the reconstruction of such a missing and or misplaced file. Without such communication, there is a presumption that the office/officer legally mandated to keep the court records has the same in his/her custody.

The internal steps thus outline as above referenced, though internal are a good operational tool coupled with the written communication from the official custodian of court records, the Registrar or the appointed Deputy Registrar(s)...

It shall be imperative for the officer responsible for the custody of the court file(s) to issue written Communication in this regard and on the request by the applicant. Reference shall be the steps outline above and noted in *Abdul Karim Omar v Stephen Ngumbau Kitbuka* [2017 eKLR...

Upon confirmation by the responsible officer as above and the court Registrar or the Deputy Registrar(s), the parties herein shall be at liberty to move the court as appropriate. A timeline is envisaged under the internal process for tracing missing files. Such time is reasonable and upon lapse, the parties without being put into unnecessary expense are at liberty to move the court as appropriate.

At this instance, the application dated October 9, 2019 seeking for the reconstruction of the court file in petition 2 of 2013 *Peter Wambugu Kariuki & 16 others v Kenya Agricultural Research Institute* is premature.”

8. Similarly, in the present case, apart from the emails written by the Deputy Registrar, Nakuru Environment and Land Court and the applicant’s advocates, indicating that a meeting was to be held to discuss the alleged missing file, the applicant did not produce any document or communication from the Deputy Registrar to indicate that the file was missing and could not be traced. As was held in the case of *Peter Wambugu Kariuki & 16 others v Kenya Agricultural Research Institute* (supra) without the said communication from the Deputy Registrar, there is a presumption that the officer mandated to keep the court records has the same in their custody. Consequently, it is my view that the applicant’s application is premature as the requisite procedure for tracing of the file has not been followed. The Deputy Registrar of this court shall take up the matter and follow the requisite procedure within the next 30 days. Each of the parties shall bear their own costs of the application.

**DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 20<sup>TH</sup> DAY OF SEPTEMBER 2023.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

