



REPUBLIC OF KENYA



**In re Estate of Maritim Chepkwony (Deceased) (Miscellaneous Cause
18 of 2022) [2025] KEHC 2257 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2257 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CAUSE 18 OF 2022
RN NYAKUNDI, J
FEBRUARY 14, 2025
IN THE MATTER OF ESTATE OF MC (DECEASED)**

BETWEEN

WILLIAM KIMELI ROTICH 1ST OBJECTOR

JULIUS KIPROTICH KIPKORIR 2ND OBJECTOR

AND

KIBOR ARAP LAGAT PETITIONER

RULING

1. What is pending before me for determination is a Notice of Motion Application dated 24th May 2022 premised under Section 1A, 1B and 3A of the *Civil Procedure Act* and Order 51, Rule 1 of the Civil Procedure Rules 2010 where the Applicant is seeking the following orders:
 - a. That this Honourable Court be pleased to order the reconstruction of the file Eldoret High Court Succession Cause No 489 of 2009 as per the annexures contained herein.
 - b. That the pleadings and documents annexed to the affidavit herein be accepted as copies of the original pleadings filed in court.
 - c. That the reconstructed file be kept in the strong room of the court.
 - d. That the costs of this application be provided for.
2. The Application is based on the grounds on the face of it among others:
 - a. That several attempts have been made at the registry to locate the said file without success.
 - b. That all the diligent efforts to trace the court file has failed.
 - c. That it in the best interest of justice that this application is allowed.



- d. That the objectors have indeed been prejudiced by loss of the file.
 - e. That the file disappeared at the hearing stage of this suit.
 - f. That the Petitioner will not be prejudiced in any way.
 - g. That the matter should be heard and determined expeditiously on merit.
3. The Application is supported by the annexed affidavit dated 24th May 2022 sworn by William Kimeli Rotich where he avers as follows:
- a. That the Petitioner herein sought for grant of letters of administration of the Estate of Maritim Chepkwony way back in 2008 at Kapsabet Law Courts and the same was granted to him.
 - b. That on 26th November, 2008 I lodged an Application for the revocation and or Annulment of the grant of letters of administration in the High Court of Kenya at Eldoret and the said application was allowed and I was issued with the order.
 - c. That since 2009 when I was granted an Order for the Revocation and or annulment of the grant of letters of administration this matter has not been heard.
 - d. That the file disappeared in the Eldoret Family Division registry in 2010 to date.
 - e. That it's also saddening that the file cannot be traced in the registry despite several attempts by my advocate since 2010 to date.
 - f. That to date the court file could not be traced making my moves as a lay person is totally unbearable.
 - g. That I have been advised that there is need to seek reconstruction of the said court file.
 - h. That I desire to put across my part of the story as the son and beneficiary of the estate which I cannot do without the court file.
 - i. That the disappearance of the file has not only placed me in a state of agony but also other objector listed herein.
 - j. That seemingly the mistakes of the court have heavily landed on us.
 - k. That the objectors herein deserve to be heard thus the need to have the file reconstructed.
 - l. That I do pray that the court be pleased to have the same reconstructed.

Analysis and Determination

4. I have carefully read and considered the Notice of Motion Application by the Applicant and there is only one issue for determination i.e. Whether the Applicant has made out a case for reconstruction of the court file in Eldoret High Court Succession Cause No 489 of 2009

Whether the Applicant has made out a case for reconstruction of the court file in Eldoret High Court Succession Cause No 489 of 2009

5. It is vital to note that an order for reconstruction of a missing court file is consistent with the provisions of Article 48 of *the Constitution* of Kenya 2010 which provides for the right to access justice. To decline a party from reconstructing a missing file amounts to denying a party the opportunity to ventilate his or her/its case which in my view is an affront to the aforementioned provision of *the Constitution* and



more particularly, where it has not been shown that the original file went missing as a result of a mistake on the part of the party making such request.

6. Nevertheless, the application at hand was expressed to have been brought under the provisions with regard to the court overriding objective and the oxygen principle and especially the provision of Section 3A of the *Civil Procedure Act*, Cap. 21 Laws of Kenya which provides as follows:

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

7. It is this provision of law that provides for the inherent powers of the courts upon which basis and in the absence of a specific law, that the courts can make necessary orders in the interest of justice so as to prevent abuse of the court process.

8. However, in my view, the reconstruction of lost files is a purely internal and administrative affair to be dealt with strictly by the office of the Deputy Registrar and the official overseeing the custody of the court files. I also appreciate that in the absence of a specific law or practice directions on the issue of reconstruction of lost files, recourse has to be had on the guidelines laid in the High Court of Kenya, Registry Operation Manual. The Second Edition thereof at pages 33-34 the guidelines are set out as follows: “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.”

9. In the instant case, the Applicant stated in his supporting grounds of the application that: several attempts have been made at the registry to locate the said file without success; all the diligent efforts to trace the court file has failed; the objectors have indeed been prejudiced by loss of the file and the file disappeared at the hearing stage of this suit.



10. Moreover, the Applicant stated in his annexed affidavit that: the file disappeared in the Eldoret Family Division registry in 2010 to date and that it's also saddening that the file cannot be traced in the registry despite several attempts by my advocate since 2010 to date. The Applicant Annexed a copy of the letters dated 07/08/2020, 20/09/2021 and 11/11/2021 respectively to the Deputy Registrar and marked them as WKR 3(a)(b)(c).
11. I am guided by the decision of LL Naikuni, J in the case of Mbira Vs Makau (Miscellaneous Application 28 of 2023) [2024] (KLR) where the Court held that; A party has to demonstrate, by way of correspondences, that he has written to the courts requesting for the file to be availed. He must also write to the courts requesting to be allowed to reconstruct the file. To allow an application for reconstruction without sufficient proof that the file may be lost is to open a door for every litigant to seek to reconstruct a file on the flimsiest of grounds, with the resultant effect of the opening of multiple files in respect of the same case. This must not be allowed.
12. It is also critical to note that once the order for the reconstruction of the court file is issued, both parties shall supply the necessary records for the same. In the case of Abdul Karim Omar Vs Stephen Ngumbau Kithuka [2017] eKLR the court held that:

“If a file is missing the court has internal procedures to apply to trace the same but the applicants herein have no control over the same and can only move as herein done and seeking for the reconstruction of the file not traced.”
13. In conclusion as I agree with the Applicant, it will be in the interest of justice for this Honourable Court to use its discretion to allow the prayer on the reconstruction. In a lengthy analysis, the Honorable Court carefully considered and weighed interest against the balance of convenience. Finally, in light of the foregoing detailed analysis of the application, this court issues the orders stated below:
 - a. The Notice of Motion Application dated 24th May 2022 be and is hereby found to have merit and the same is allowed in its entirety.
 - b. That an Order do and is hereby issued for the reconstruction of the file Eldoret High Court Succession Cause No 489 of 2009.
 - c. The costs shall be in cause.
 - d. The Deputy Registrar to monitor compliance with the said orders.
 - e. It is so ordered

DATED SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 14TH DAY OF FEBRUARY, 2025

R. NYAKUNDI

JUDGE

