



REPUBLIC OF KENYA



KENYA LAW
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**Mwambegu v Hinzano & 3 others (Family Miscellaneous Application
024 of 2024) [2025] KEHC 2366 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2366 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
FAMILY MISCELLANEOUS APPLICATION 024 OF 2024**

G MUTAI, J

FEBRUARY 7, 2025

BETWEEN

NELSON MENZAH MWAMBEGU OBJECTOR

AND

HINZANO NGONYO HINZANO 1ST RESPONDENT

SALIM KIPONDA HINZANO 2ND RESPONDENT

TSANGOLEM KHAMIS KIPONDA 3RD RESPONDENT

PUBLIC TRUSTEE, MOMBASA COUNTY 4TH RESPONDENT

RULING

1. Before me is a Notice of Motion dated 18th July 2024 vide which the Objector/Applicant seeks the following orders: -
 1. Spent;
 2. That this Court be pleased to order a Skeleton file for High Court Succession Cause No 433 of 2000; the Estate of Monje Ngonyo to be reconstructed;
 3. That the pleadings and documents annexed hereto be deemed as copies of the original filed before this honourable Court;
 4. That upon reconstruction, the file be kept in the Court Registry's strong room for safe custody; and
 5. That costs of this application be in the cause.
2. The grounds upon which the application is based are that the applicant filed a Summons for Revocation of Grant on 20th September 2018 in High Court Succession Cause No 433 of 2000, re



Estate of Monje Ngonyo. Since filing the application, the applicant has been unable to ventilate his case as the Court file went missing. It was urged that the fact that the court file is missing had been confirmed by the Court Administrator, who, however, didn't issue a certificate to that effect. The applicant averred that it was necessary for the court file to be reconstructed so that the case could be heard and determined. Finally, no party would be prejudiced.

3. The Public Trustee filed a replying Affidavit sworn on 5th August 2024 vide which he opposed the application on the ground that the Objector/Applicant had no beneficial interest in the estate of the Monje Ngonyo and therefore lacked locus standi. It was urged that the High Court Succession Cause No 433 of 200 was not in respect of the estate of Monje Ngonyo.
4. The application was also opposed by the 1st to 3rd Respondents. The 3rd Respondent swore an affidavit on 30th October 2024, in which he deposed that the correct Succession Cause in the relevant matter was 438 of 2000 rather than 433 of 2000. It was urged that the succession matter had been concluded. The deponent accused the Applicant of being a vexatious litigator and of not following up his matter with diligence. It was noted that although the Applicant averred that the Court administrator had confirmed that the Court file was missing, no evidence of such confirmation was available. The 1st to 3rd Respondents, therefore, urged that the application be dismissed.
5. The Applicant filed written submissions dated 6 December 2024, in which it was urged that the Court file be reconstructed. In the said submissions, the Applicant's counsel stated that they were not able to get a certificate of loss from the Court Administrator as he failed or declined to do so.
6. The advocate for the 1st and 2nd Respondent filed written submissions dated 12th November 2024 in which she stated that the Applicant was not a party to the previous cause, to wit 438 of 2000 and thus lacked standing. She submitted that the application used the wrong case number. Counsel submitted that the estate was distributed in full, and nothing was pending.
7. Counsel for the Respondent averred that reconstructing the court file would reopen settled issues without justification as they would be forced to bear the burden of defending themselves from matters which had been closed. Reliance was placed on the case of *re Estate of Makol Ombui* [2018]eKLR.
8. It was, therefore, urged that the application be dismissed with costs.
9. I have considered the application, the response by the Public Trustee and the first to third Respondents, and the parties' written submissions.
10. Has a case been made for reconstructing the Court file? This is the issue that this Court is called upon to determine.
11. There is no specific provision of the law and the rules of the court for the reconstruction of court files. The High Court of Kenya Registry Operation Manual, however, has provisions that govern how court files that are missing may be reconstructed. It provides at pages 33-34, 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.”
12. The reason for the elaborate process set out above is that the integrity of the Court documents, its system, and the security of its records is critical. Care must always be taken to ensure that what is in the Court files is authentic. Reconstruction of Court files should not be undertaken at whim unless it is clear that the Court records are actually lost and irrecoverable. For that reason, it is necessary to obtain a certificate of loss from the court administrator.
13. I am guided by the persuasive authority of the decision of the Environment and Land Court in *Mbira v Makau* (Miscellaneous Application 28 of 2023) [2024] KEELC 5413 (KLR) (9 July 2024) (Ruling) where Naikuni J stated as follows:-
- “I am not satisfied that the Applicant has convinced the court that he is deserving of the orders sought. 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.”
14. In this case, no certificate of loss has been obtained. The explanation is that the Court Administrator declined to issue the document. I have not seen evidence of follow-up with the office that would convince me that there was a concerted effort to look for the Court file. As a public servant, the Court Administrator is duly bound to respond to correspondence directly related to his work.
15. In any case, there appears to have been an inordinate delay in this matter. The applicant filed his Summons in 2018 and didn’t prosecute them with any level of diligence. The Applicant is unsure about the case number and may be seeking to reconstruct a totally different case.
16. In the circumstances of this matter, I am not persuaded that a case has been made at this point warranting the reconstruction of the Court file. Therefore, I decline to issue the order sought.
17. I make no orders as to costs as this is a succession dispute.



18. Orders accordingly

DATED AND SIGNED AT MOMBASA THIS 7TH DAY OF FEBRUARY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of

No appearance for the Applicant;

No appearance for the 1st, 2nd & 3rd Respondents;

No appearance for the 4th Respondent; and

Arthur – Court Assistant.

