



**Mohamed v Ndegwa & another (Civil Appeal E043 of 2021)
[2024] KEHC 5766 (KLR) (13 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5766 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E043 OF 2021
DAS MAJANJA, J
MAY 13, 2024**

BETWEEN

AFUSA MOHAMED APPELLANT

AND

IBRAHIM NDERITU NDEGWA 1ST RESPONDENT

ALICE WANJIRU WAMBUGU 2ND RESPONDENT

(Being an appeal from the Ruling and Order of Hon. P. Wambugu, PM dated 10th March 2021 at the Magistrates Court at Kwale in Civil Case No. E004 of 2020)

JUDGMENT

1. Before the Subordinate Court, the Appellant filed an application for reconstruction of the court file in KWALE CMCC NO. 143 of 2004 as the court file had been disposed of under the Records Disposal (Court Rules) under Gazette Notice No. 1065. The trial court dismissed the application on the ground that it was an abuse of the court process. This has precipitated this appeal.
2. I have considered the appeal. The application before the trial court was for reconstruction of the court file. The trial magistrate went ahead to consider whether the Appellant proceeded further with the matter which was not a matter raised in the application. The issue of execution or further steps to be taken could only be argued once the court file had been reconstructed.
3. I allow the appeal on terms that the Appellant's application dated 26.10.2020 and the court file in KWALE CMCC No. 143 of 2004, AFUSA MOHAMED V IBRAHIM NDERITU NDEGWA shall be reconstructed in accordance with the documents furnished by the Appellant.
4. There shall be no order as to costs.

SIGNED AT NAIROBI



D. S. MAJANJA

JUDGE

DATED and DELIVERED at MOMBASA this 13th day of May 2024.

OLGA SEWE

JUDGE

HCCA NO. 40 OF 2023 JUDGMENT Page 2

