



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISC. APPLICATION NO. E20 OF 2021

GEOFFREY MWIRIGI MAINGI PAUL.....APPLICANT

VERSUS

MOSES MIRIRA MAINGI..... 1ST RESPONDENT

FRANCIS MUTUMA MAINGI..... 2ND RESPONDENT

NAHASON NDEREBA MAINGI..... 3RD RESPONDENT

RULING

1. Before the court is an application dated 28.6.2021 seeking for reconstruction of **HCC No. 316 of 1992** and lifting of inhibition orders issued regarding Parcel No. **Abothuguchi/293**.
2. The application is supported by an affidavit sworn on **28.2.2021**.
3. Further the applicant is relies on written submissions dated **18.8.2021**.
4. The 2nd respondent has filed a replying affidavit sworn on 12.7.2021. Though he does not oppose re-construction of the he opposes lifting of orders.
5. To buttress their arguments the respondents with leave filed written submission dated 8.10.2021.
6. Having gone through the respective positions held by the parties, what comes out clearly is that an appeal was filed before the Court of Appeal Nyeri and was finalized on 3.10.2012. The point of departure for the parties is who is to blame for the delay thereafter.
7. As is admitted by both parties, the Nyeri Court of Appeal registry has not provided the date the file exited from their system to help the court check from its end.
8. Similarly the file was being determined at the time the ELC courts were being established and or operationalized. It may as well be true the file having been a High Court file, the same was returned to the High Court registry and not the ELC registry. There are procedures clearly set out under the Registry Operating Manual on how to trace, declare and certify a file as missing and or lost before an order can be made for the opening of a skeleton file.
9. In my view, parties herein have not supplied to this court any certificate of confirmation that the file is missing from the Deputy Registrar. In absence of that it is my finding the internal mechanism to trace the file and explore all avenues to trace the file have not been exhausted.
10. I therefore make an order that the Deputy Registrar in line with the 2nd Edition of the High Court of Kenya Registry Operation Manual takes appropriate measures within 45 days from the date hereof.
11. Regarding the issue of lifting the inhibition, none of the parties can be blamed over the “alleged” missing file given the circumstances of this matter.

In the premises I find no merits in this application. The same is dismissed with no orders as to costs.

File closed.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 8TH DAY OF DECEMBER, 2021

In presence of:

Muthomi for applicant

Miss Nyaga for respondent

HON. C.K. NZILI

ELC JUDGE