

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO. 21 OF 2011

MARIA NDURU M'TURUCHIU (Sued as legal representative of the estate of

STANLEY M'TURUCHIU M'MWENDA.....APPELLANT

VERSUS

JOHN KIRIMI M'MWENDA.....1ST RESPONDENT

AGNES KANYAMU.....2ND RESPONDENT

RULING

1. Vide the notice of motion dated 10.2.2020, the applicant is seeking orders for the setting aside of the order made on 2.12.2019 dismissing the applicant's application dated 18.11.2019 and/or amended application dated 28.11.2019 and reinstate the same for hearing and determination on merits and that costs of the application be provided for.

2. The grounds in support of the application are set out on the face of the application and in the supporting affidavit of the applicant's advocate. The applicant contends that he filed the earlier application on 18.11.2019 under a certificate of urgency. The application was given the date of 2.12.2019.

3. However, the applicant's and the clerk of his advocate were informed by the court registry staff that matter was coming up on 3.12.2019. That is why they were not in attendance on 2.12.2019 when the application was dismissed.

4. I find that the documents availed by the applicant demonstrate a reasonable argument that they believed the matter was listed on 3.12.2019 and not 2.12.2019. However, the contention that it is the ELC registry staff who gave them the wrong date is not plausible as applicant has not pinpointed the particular officer who allegedly gave them the date.

5. Nevertheless, the application is unopposed and I am inclined to allow the same with no orders as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 28TH DAY OF MAY, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE