



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Njenga v Owino (Miscellaneous Application E181 of 2022)
[2023] KEMC 260 (KLR) (3 August 2023) (Ruling)**

Neutral citation: [2023] KEMC 260 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
MISCELLANEOUS APPLICATION E181 OF 2022
PA NDEGE, SPM
AUGUST 3, 2023**

BETWEEN

GEORGE KARANJA NJENGA APPLICANT

AND

COLLINS OTIENO OWINO RESPONDENT

RULING

1. The application for determination is the Motion, dated 02.06.2022. It is a straightforward application for opening of a skeleton file or simply a reconstruction of the court file in Nakuru Cmcc No. E096 Of 2021 *George Karanja Njenga v Collins Otieno Owino*.
2. I do not quite understand why the application for reconstruction of the court in Nakuru Cmcc No. E096 Of 2021 *George Karanja Njenga v Collins Otieno Owino* had to be brought through a miscellaneous file, instead of being lodged in the file in Nakuru Cmcc No. E096 Of 2021.
3. The usual practice, in cases of this nature, is that the registry opens a skeleton file in the cause, in this case in *Nakuru Cmcc No. E096 Of 2021*, and then the application for reconstruction is made in the skeleton or temporary file as held by the High Court in *Mary Akomba v Elizabeth Mujisa Vlgats* (2021) eKLR
4. Be that as it may, it would cause no harm at all to grant the orders sought in the miscellaneous file. Reconstruction of a trial court file is a straightforward matter that none of the parties should object to. The court considers Article 50(2) (e) of the *Constitution* of Kenya 2010 which states that trials should begin and conclude without unreasonable delay.
5. However, I have noticed anomalies and discrepancies in this application. In the supporting affidavit filed on 21st July 2022, Kiongo. P Muremi, the advocate in conduct of this matter on behalf of the Applicant avers that *CMCC E096 of 2021* was filed on 9th February 2021 but was erroneously registered as *CMCC 96 of 2020*. If this was the anomaly, then there is no indication from the Applicant that he made some efforts to have the anomaly corrected or that the mix up in the registration could not have



caused the loss of trace or track of the case file herein. For this reason, and as an act of due diligence on my part, I do hereby insist that more sufficient information need to be furnished possibly in the original cause for this court to be appraised of the facts relevant to the lost file.

6. There is also no sufficient demonstration by the applicant of the efforts he has made to liaise with the court registry and the administration with a view to trace the original file herein and I therefore reject the application as filed due to the reasons mentioned above, mainly for lack of sufficient particulars. The applicant to administratively liaise with the Court registry or the court administration to have the issue raised herein sorted out and such judicial intervention as sought for herein should be a last resort measure.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 03RD DAY OF AUGUST, 2023.

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's Counsel: N/A

Defendant's counsel: N/A

Plaintiff: N/A

Defendant: N/A

