



**Kiarie & another (Administrators of the Estate of Kiarie Ng'ang'a - Deceased)  
v Aboli & another (Administrators of the Estate of Rev Madar Evans Okanga  
Dondo - Deceased) (Environment and Land Miscellaneous Application  
E030 of 2025) [2025] KEELC 5761 (KLR) (1 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5761 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E030 OF 2025  
A OMBWAYO, J  
AUGUST 1, 2025**

**BETWEEN**

**JOHN NG'ANG'A KIARIE ..... 1<sup>ST</sup> APPLICANT  
PATRICK NG'ANG'A KIARIE ..... 2<sup>ND</sup> APPLICANT  
ADMINISTRATORS OF THE ESTATE OF KIARIE NG'ANG'A - DECEASED**

**AND**

**FOSCA ABOLI ..... 1<sup>ST</sup> RESPONDENT  
CALEB OTIENO MADARA DONDO ..... 2<sup>ND</sup> RESPONDENT  
ADMINISTRATORS OF THE ESTATE OF REV MADAR EVANS OKANGA  
DONDO - DECEASED**

**RULING**

**Brief Facts**

1. The Applicants filed the instant application dated 18th March, 2025 seeking the following orders:
  1. Spent.
  2. That this Honourable Court be pleased to order for opening of a skeleton file in respect of Nakuru ELC No. 108 of 2012 formerly Nakuru HCC No. 119 of 2006-Fosca Aboli & Caleb Otieno Madara Dondo (Administrators of the Estate of Reverend Madar Evans Okanga Dondo (Deceased) V John Ng'ang'a Kiarie and Patrick Ng'ang'a (Administrators of the estate of Kiarie Ng'ang'a (Deceased)).



3. That the documents annexed herein including pleadings and rulings be used for the said opening of a skeleton file.
  4. That opening of the said skeleton file the same be kept under lock and key.
  5. That costs hereof be in the cause.
2. The Application was based on grounds set out and supported by the Affidavit of John Ng'ang'a Kiarie & Patrick Ng'ang'a Kiarie the Applicants sworn on 18th March, 2025. They stated that the court file for Nakuru ELC No. 108 of 2012 formerly Nakuru HCC No. 119 of 2006-Fosca Aboli & Caleb Otieno Madara Dondo (Administrators of the Estate of Reverend Madar Evans Okanga Dondo (Deceased) V John Ng'ang'a Kiarie and Patrick Ng'ang'a (Administrators of the estate of Kiarie Ng'ang'a (Deceased) has been missing since 23rd March, 2023.
  3. They further stated that efforts to trace the said file has been futile and they were desirous of having the said matter heard and disposed of. They stated that it was only appropriate that a skeleton file be opened in respect of the matter. They added that all the pleadings and rulings in the said matter be used for the said reconstruction and the file be kept under lock and key.

### **Response**

4. The Respondents filed their Grounds of Opposition on the following grounds:
  1. That the application is prematurely brought.
  2. That the application is filed in express violation of pages 33 and 34 of the High Court of Kenya Registry Operation Manual.
  3. That the application is frivolous vexatious and otherwise an abuse of the court process. Submissions
5. Counsel for the Respondents filed his submissions dated 18th July, 2025 where he identified one issue for determination being whether the application was merited. He submits that the guiding procedure of the present application was provided for under the High Court Registry Operation Manual 2nd edition under pages 33 and 34. He submits that the said procedure has since been adopted by courts in considering similar application. He submits that there was no proof that the file was missing or any efforts to trace the same. He added that there was no letter to the deputy registrar attached to show that there have been efforts to trace the file. He also submits that the file was very old and there were chances that the same may have been dismissed for want of prosecution and that the present application sought to circumvent the procedure. He submits that search at the CTS showed the suit was closed on 23rd March, 2023 by an order of this court. It was counsel's submission that the procedure in the manual ought to be strictly followed to avert situations where litigants use crafty means to create skeleton files in order to resurrect dismissed files.
6. He relied on the cases in JN Murage & K. Juma t/a Murage Juma & Co. Advocates V Tumaz & Tumaz Enterprises Limited [2023] KEHC 4140 (KLR) and Njuguna V Okworo [2023] KEELC 19873 (KLR). In conclusion, he submits that the application was premature and the same should be dismissed with costs.

### **Analysis and Determination**

7. This court has carefully considered the application and the main issue for determination is whether the Applicants have made out a case for leave to reconstruct the court file Nakuru ELC No. 108 of 2012.



The Applicants want this court to order the reconstruction of the court file Nakuru ELC No. 108 of 2012 to be on the basis of copies of pleadings supplied by the Applicants and that upon reconstruction the file be kept under lock and key. The Respondents on the other hand contend that there was no proof that the file was missing or any efforts to trace the same. They further contend that the Applicants did not follow the laid down procedure under the High Court Registry Manual before an application for reconstruction was to be made.

8. In the instant case, what is sought to be reconstructed is Nakuru ELC No. 108 of 2012 formally Nakuru HCC No. 119 of 2006. It is this court's view that the court can in fact make necessary orders in the interest of justice so as to prevent abuse of the court process. This court also appreciates that there is no specific law or practice directions on the issue of reconstruction of lost files. It is my finding that reconstruction of lost files is a purely internal and administrative affair to be dealt with strictly by the office of the Deputy Registrar and the official overseeing the custody of the court files. Therefore, recourse can only be found under the guidelines laid in the High Court of Kenya, Registry Operation Manual at pages 33-34 which stated as follows:-
9. 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."
10. The Applicants stated in their supporting affidavit that efforts to trace the file has been futile hence the need for a skeleton file. However, they did not attach any documentary evidence proving that the court file was indeed lost. It is my view, that the conclusion for need to open a skeleton file can only be arrived at upon written communication by the Deputy Registrar through a certificate confirming the loss of the court file and a recommendation for reconstruction. It is only until then that the application for reconstruction may be necessary, considering that the guidelines on reconstruction as reproduced above have provided for the necessary timelines for completion of the process.
11. In light of the above, I am unable to allow the reconstruction of the file based on what the Applicant has presented. It is my view that it would be too risky to allow reconstruction without any evidence of any correspondences between the Applicant and the Deputy Registrar. It is also my view that such action would be so risky resulting in a window being opened for all manner of fraudsters to seek reconstruction which the court itself cannot confirm. The upshot of the forgoing is that the application is without merit and is thus dismissed with costs. It is so ordered.



**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

