



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO.920 OF 2016

JAMES ONYONGO OBUKI.....PLAINTIFF/APPLICANT

=VERSUS=

OMONDI OGUTU.....DEFENDANT/RESPONDENT

=AND=

DR. OMONDI OGUTU.....INTENDED INTERESTED PARTY

RULING

1. This is the Notice of Motion dated 25th April 2017 brought under Section 1A, 1B and 3A of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules 2010.

2. It seeks order:-

(1) Spent

(2) That the court file be reconstructed.

(3) That the said reconstruction be in the basis of the copies of the pleadings and the documents filed herewith.

(4) That upon reconstruction the Deputy Registrar to ensure the safe keeping of the reconstructed file.

(5) That costs of this application be provided for.

3. The grounds are on the face of the application and are set out in paragraph 1 to 7.

4. The application is supported by the affidavit of Ben Oluoch Olunya Advocate, sworn on the 25th April 2017. The court directed that the application be disposed of by way of written submissions.

5. It is the intended interested party's submissions that the court file has since disappeared from the court registry and cannot be traced. Further that the intended interested party deserves to be enjoined to this suit as he is the registered owner of the suit property. They have relied on the case of **Rajabali vs Kutubdin A. Khanbai & 2 Others Civil Suit No. 190 of 2012**.

6. The application is not opposed. The plaintiff and the defendant who were duly served neglected to file any grounds of opposition or a replying affidavit.

7. I have given due consideration to the reasons given for reconstruction of the court file. I find that they are plausible.

8. Accordingly, I find merit in this application and grant the orders sought namely:-

(a) That the court file be reconstructed.

(b) That the said reconstruction be on the basis of the copies of the pleadings and the documents filed herewith.

(c) That upon reconstruction the Deputy Registrar to ensure the safe keeping of the reconstructed file.

(d) That the costs of this application be on the cause.

It is so ordered.

Dated, signed and delivered in Nairobi on this 11TH day of DECEMBER 2018

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Advocate for Intended Interested Party

.....Court Assistant