



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E&L MISC APPL 12 OF 2013**

**LORNA JEMUTAI RONO & ANOTHER .....APPLICANTS**

**VS**

**DAVID OITO.....RESPONDENTS**

**RULING**

The applicant commenced this miscellaneous cause under the provisions of Section 1 A, 1 B, and 3A of the Civil Procedure Act, and Order 23 (1) of the Civil Procedure Rules. The application seeks orders that a new file be reconstructed in respect of the suit filed as Eldoret HCCC No. 73 of 2007 and upon being constituted, the said file be registered under the Environment and Land Court registry.

Order 23 cannot of course support an application of this nature as it relates to the attachment of debts. The court under Section 3A however has discretion to make any order to ensure that the ends of justice are met.

From the supporting affidavit, I can tell that an application for injunction was canvassed before Ibrahim J (as he then was) on 29/5/2007 and ruling was reserved. However, no ruling has been delivered and the file is missing from the registry.

When the counsels first appeared before me on 10 April 2013, I was hesitant in giving the order of reconstruction until there has been confirmation from the Deputy Registrar, or the judge who was previously handling the matter, that indeed the original file cannot be traced. Justice Ibrahim was gracious enough to write a letter to confirm that the file cannot be traced. Given that correspondence, I am satisfied that the file is either lost or misplaced and cannot be found.

I therefore issue an order permitting the reconstruction of the file in issue and that upon reconstruction, the same be filed in the Environment and Land Court. I make no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 3RD DAY OF OCTOBER 2013

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

***Read in open Court***

***In the Presence of:-***

***Mr. R.L. Kamau holding brief for Mr. Maritim for the applicant***

***Mr. P.K. Komen holding brief for M/s Terer & Co for the respondent***