



|                                                                                                                                                                                                                                                                                                                          |                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Case Number:                                                                                                                                                                                                                                                                                                             | Environment and Land Case 12 of 2021                                                          |
| Date Delivered:                                                                                                                                                                                                                                                                                                          | 11 Apr 2022                                                                                   |
| Case Class:                                                                                                                                                                                                                                                                                                              | Civil                                                                                         |
| Court:                                                                                                                                                                                                                                                                                                                   | Environment and Land Court at Isiolo                                                          |
| Case Action:                                                                                                                                                                                                                                                                                                             | Ruling                                                                                        |
| Judge:                                                                                                                                                                                                                                                                                                                   | Peter Muchoki Njoroge                                                                         |
| Citation:                                                                                                                                                                                                                                                                                                                | Abdi Abkulla Tari v Iebc Isiolo North Constituency Office Co-ordinator & 2 others [2022] eKLR |
| Advocates:                                                                                                                                                                                                                                                                                                               | -                                                                                             |
| Case Summary:                                                                                                                                                                                                                                                                                                            | -                                                                                             |
| Court Division:                                                                                                                                                                                                                                                                                                          | Environment and Land                                                                          |
| History Magistrates:                                                                                                                                                                                                                                                                                                     | -                                                                                             |
| County:                                                                                                                                                                                                                                                                                                                  | Isiolo                                                                                        |
| Docket Number:                                                                                                                                                                                                                                                                                                           | -                                                                                             |
| History Docket Number:                                                                                                                                                                                                                                                                                                   | -                                                                                             |
| Case Outcome:                                                                                                                                                                                                                                                                                                            | -                                                                                             |
| History County:                                                                                                                                                                                                                                                                                                          | -                                                                                             |
| Representation By Advocates:                                                                                                                                                                                                                                                                                             | -                                                                                             |
| Advocates For:                                                                                                                                                                                                                                                                                                           | -                                                                                             |
| Advocates Against:                                                                                                                                                                                                                                                                                                       | -                                                                                             |
| Sum Awarded:                                                                                                                                                                                                                                                                                                             | -                                                                                             |
| <p>The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.</p> |                                                                                               |

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ISIOLO**

**ELC CASE NUMBER 12 OF 2021(FORMERLY MERU ELC 45 OF 2018)**

**ABDI ABKULLA TARI.....PLAINTIFF/RESPONDENT**

**VERSUS**

**IEBC ISIOLO NORTH CONSTITUENCY**

**OFFICE CO-ORDINATOR.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**IEBC ISIOLO COUNTY CO-ORDINATOR.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**THE CHAIRMAN, IEBC.....3<sup>RD</sup> DEFENDANT/APPLICANT**

**RULING**

1. This application is dated 4<sup>th</sup> April, 2022 and seeks the following orders:

1. **THAT** the honorable court be pleased to review, vary and/or set aside the proceedings had and taken on 21.03.2022 when the Plaintiff's case was heard and closed.
2. **THAT** the defendant's application dated 17/03/2022 be set down for hearing and determination on merits and/or that the directions be issued with respect to the said application.
3. **THAT** further and in the alternative and without prejudice to the foregoing, the plaintiff's case be re-opened, the plaintiff and his witness be recalled for cross-examination.
4. **THAT** the costs of this application be in the cause.

2. The application is supported by the affidavit of Advocate **Charles Benedict Mwangela sworn on 4<sup>th</sup> April, 2022** and has the following grounds:-

a. On **07.03.2022** the honorable court granted the defendants the last adjournment but the counsel holding brief on that day gave redacted information to the defendant's principal advocate.

b. On **21.03.2022**, the honorable court proceeded with hearing and closure of the Plaintiff's case and directed that the matter proceeds for defence hearing on **13.06.2022**, despite the pendency of the defendants' application dated 17.03.2022, filed and served on 18.03.2022 which fact of filing and service of application may not have been properly brought on the honourable court's attention. Ruling delivered on 21.03.2022 rejecting the adjournment request partly reads that counsel holding brief for the defendants told the court that "...Mr. Mwangela was seeking adjournment because he intended to file a counterclaim", which is patently incorrect.

c. Overlooking of the said defendant's application whereupon the plaintiff's case was heard and closed constitutes an error apparent on the face of the record and sufficient reason necessitating review, variation and/or setting aside of the proceedings had and taken **21.03.2022**.

d. Counsel holding brief for the defendant's advocate on 21.03.2022 was compelled to conduct a hearing without her file thereby impending and completely curtailing the defendants' right to cross-examine the plaintiff/respondent and his witness.

e. Overlooking of the application seeking amendments and introduction of a counterclaim has greatly prejudiced the defendant's primary claim and prayers in the suit.

f. The application has been preferred without undue delay, within fourteen (14) days of the orders/proceedings sought to be varied and/or set aside and more than two (2) months date given for defence hearing on 13.06.2022.

3. Having perused the application, I issue the following orders:

a) The Applicant to serve the application upon all other parties within 14 days of today.

b) All parties to come to court for directions on 9<sup>th</sup> May, 2022.

c) Cost shall be in the cause.

**Delivered in Nairobi this 11<sup>th</sup> day of April, 2022 in the absence of the parties.**

**HON. JUSTICE P. M. NJOROGE**

**E & L COURT ISIOLO**



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)