



**Dabasso v Ngalgalo (Environment and Land Miscellaneous Application
E011 of 2022) [2023] KEELC 17687 (KLR) (29 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17687 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E011 OF 2022**

AK BOR, J

MAY 29, 2023

BETWEEN

WAKO DABASSO APPLICANT

AND

ABDUBA HAR NGALGALO RESPONDENT

RULING

1. What falls for determination is the application dated April 20, 2023 seeking to set aside the order this court made on April 18, 2023 dismissing the application dated April 4, 2023 for want of prosecution. The application is made on the grounds that on April 18, 2023 the Applicant's advocate relied on an online cause list which did not list the matter for hearing on that day. The Applicant swore the affidavit in support of the application and annexed the cause list for April 18, 2023 while averring that the online cause list did not show that the matter was coming up on that day.
2. The Respondent filed a replying affidavit opposing that application, and averred that the Applicant was the 2nd defendant in Nanyuki CMCC No 86 of 2019 in which a judgment was delivered on December 14, 2022. He made an application and this court granted him stay of execution on condition that he deposited security in the sum of Kshs 500,000/=. He brought the application dated April 4, 2023 seeking review of the orders the court made for the furnishing of security. The Respondent pointed out that it was the Applicant who brought the application which was given the date of April 18, 2023 after which they served the Respondent. He contended that checking the online cause list was not enough and that the Applicant's counsel should have joined the court proceedings to confirm the position regarding their matter.
3. Looking at the court records, the application dated April 4, 2023 came up on April 6, 2023 when the court directed the Applicant to serve it for inter partes hearing on April 18, 2023. The Applicant did not attend court on April 18, 2023 and the Respondent applied for the dismissal of the application.



The court dismissed that application. The Applicant's counsel explained that he failed to attend court on April 18, 2023 because the online cause list for that day did not contain this matter.

4. The court has considered the application dated April 20, 2023 and is satisfied that it is in the interest of justice to set aside the order of April 18, 2023 dismissing the application dated April 4, 2023. The Respondent is awarded the costs of that application.

DELIVERED VIRTUALLY AT NANYUKI THIS 29TH DAY OF MAY 2023.

K. BOR

JUDGE

In the presence of:

****Mr. Robin Bundi for the Applicant****

Mr. Nderitu Gichuki for the Respondent

Ms. Stella Gakii – Court Assistant

