



REPUBLIC OF KENYA



**Kamau v Ali (Environment and Land Appeal E030 of 2024)
[2025] KEELC 213 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 213 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E030 OF 2024**

**EO OBAGA, J
JANUARY 30, 2025**

BETWEEN

MONICAH WAMBUI KAMAU APPELLANT

AND

MOHAMMED ALI RESPONDENT

RULING

1. This is a ruling in respect of a Notice of Motion dated 22nd October, 2024 in which Respondent/Applicant seeks the following orders:
 - i. That this Honourable Court do hereby stay, set aside, vary and or vacate its orders of 22nd July, 2024 staying the execution of the Judgment delivered on 14th June, 2024 in Tribunal Case No. 51 of 2020; *Mohammed Ali v Monicah Wambui Kamau*, pending the hearing and determination of the Respondent's Appeal.
 - ii. Any other order that this Honourable Court deems fit and just to grant in the circumstances.
2. The application is supported by an affidavit sworn by Arif Mohamed Ali who is son to the Applicant. The deponent contends that his lawyers were served with the application which is the subject of review and or setting aside but that they were unable to attend court because they misdiarised the matter in their diary.
3. The Applicant's application was opposed by the Appellant/Respondent based on a replying affidavit sworn on 29th October, 2024. The Respondent contends that the Applicant is not being candid on the reason for non attendance in court on 22nd July, 2024. Whereas the advocate for the Applicant denied ever being served with the application, the Applicant himself has stated that the advocate was served but he misdiarised the matter. She contended that the advocate did not provide any evidence to show that they had indeed misdiarised the matter.



4. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions filed herein. The only issue for determination is whether the Applicant has demonstrated that there was sufficient reason why he did not attend court during the hearing of the application.
5. There is no contention that there was proper service of the application and the date when the application was listed for hearing. Though counsel for the Applicant tried to claim in court that he was not served with the application, this was contradicted by the supporting affidavit to the application which acknowledged that there was service.
6. The alleged misdiarisation of the matter was not proved. There was no evidence of an extract from the advocate's diary to show that this was the position as alleged. Though the Applicant was given leave to file a supplementary affidavit, none was filed. It is also not known why the son of the Applicant had to swear an affidavit in place of his father.
7. There having been no plausible reason given why there was no attendance during the hearing of the application, I find that there is no basis upon which this court can set aside the orders of 22nd July, 2024. The greater part of the affidavit by the Applicant has gone to argue why the application which was allowed on 22nd July, 2024 should not have been allowed. This is improper. The Applicant should have concentrated on the reason why there was non attendance. I find no merit in this application which is dismissed with costs to the Respondent.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MAKUENI THIS
30TH DAY OF JANUARY, 2025.**

IN THE PRESENCE OF:

Ms. Muchiri for Appellant

Court assistant - Steve Musyoki

