



**Dabaso v Ngalgalo (Environment and Land Miscellaneous Application
E011 of 2022) [2023] KEELC 19228 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19228 (KLR)

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

AK BOR, J

JULY 6, 2023

BETWEEN

WAKO DABASO APPLICANT

AND

ABDUBA HAR NGALGALO RESPONDENT

RULING

1. This court delivered a ruling on the application dated 14/12/2022 seeking stay of execution of the judgment and decree issued on 14/10/2022 in Nanyuki Chief Magistrates Court Case No. 86 of 2019 vide which it granted stay on condition that the applicant deposited the sum of Kshs. 500,000/= in an interest earning account in the joint names of the Advocates for the applicant and respondent within 14 days of 23/3/2023.
2. The applicant brought the application dated 4/4/2023 seeking to have those orders reviewed, varied and substituted with an order requiring the applicant to deposit a title deed or logbook of similar value as the security for costs. The application was made on the grounds that the applicant was unable to raise the sum ordered within the time the court directed owing to the numerous financial challenges that he was facing. He urged that if the stay orders were not reviewed it would amount to alienation of his entire land on disputed evidence which would render his appeal nugatory. He was also apprehensive that once execution proceeded the respondent may dispose of the property to third parties which would defeat his appeal.
3. The applicant swore the supporting affidavit in which he deponed that the property belonged to his late father. He added that his mother was terminally ill and the family resources had been depleted in providing healthcare to her making it difficult to raise the funds required to satisfy the conditions for stay which this court issued on 23/3/2023. He urged the court to allow him to deposit any other form of security and attached medical records in respect of Halima Jillo.



4. The respondent opposed the application vide the replying affidavit sworn on 6/6/2023 and averred that this court should not entertain the application because it is res judicata while adding that there were no grounds advanced by the applicant for review of the orders. He averred that the application was brought under the wrong provisions of the law and that sufficient grounds had not been granted to warrant review. The respondent pointed out that the applicant had not disclosed the parcel of land he intended to be used as security and had failed to furnish a copy of the title deed, search or copy of the log book of the proposed form of security.
5. The application was argued orally on 14/6/2023. The issue for determination is whether the court should review the terms for stay of execution that it gave earlier. It would have been helpful if the applicant had exhibited evidence of the land or motor vehicle that he wishes to substitute as security in this matter.
6. The court declines to grant the orders sought in the application dated 4/4/2023 save to make an order that in the event that execution of the decree from the magistrate's court proceeds, the respondent must remain alive to the fact that he should not deal with the land in a manner which would render the appeal nugatory.

The costs of the application will be in the cause.

DELIVERED VIRTUALLY AT NANYUKI THIS 6TH DAY OF JULY 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

