

REPUBLIC OF KENYA

IN THE HGH COURT OF KENYA AT KITALE

MISC CIVIL APPLICATION NO.E063 OF 2025

PAUL MIGWI GATHOSI

T/A SHAMAH ELECTRONICS.....

.....APPLICANT

VERSUS

NATHAN KENGWE MOBEGI

T/A SPANISH GLOBAL COLLEGE.....

RESPONDENT

RULING

1. Paul Kamau Migwi Gathosi the applicant herein, has moved this court vide a Notice of Motion dated 18/9/2025 for the following reliefs namely;

(i) Spent

(ii) That this Hon court be pleased to set aside the orders issued on 18/9/2025 and reinstate the application dated 30/7/2025 for hearing on merit.

(iii) Upon reinstatement the application dated 30/7/2025 be allowed as unopposed.

2. The grounds listed on the face of the application are;

- a) *That failure to attend court by the applicant's counsel was not deliberate.*
 - b) *That when the matter was called the applicant's counsel was appearing before Justice Nzili in ELC Petition No.E002 of 2025 Peter Kitelo & 2 others -vs- Kimeto Tum & 5 Others.*
 - c) *That the applicant's counsel had requested a colleague to hold her brief and have the matter placed aside.*
 - d) *That the application dated 30/7/2025 was duly served upon the respondent's counsel on 8/9/2025 and by 18/9/2025 when the matter came up for inter partes hearing the respondent had not filed any response.*
 - e) *That the application has been filed without delay.*
3. The application is supported by the affidavit of Monica Mwemeke sworn on 18/9/2025 where she has reiterated the above grounds adding that the applicant should not be penalized for mistake by counsel.
 4. Their application is unopposed but this court is inclined to determine it on the merits.
 5. The application dated 30/7/2025 was filed on 30/7/2025 and placed before this court on the same day. This court found the application not urgent and fixed it for inter partes on 18/9/2025.
 6. On 18/9/2025 when the matter was called only the respondent was represented and though no response had been filed, there was no one to prosecute the application and the same was dismissed for want of prosecution.

7. The application itself was seeking court's discretion to extend/enlarge time to enable him appeal against a decision delivered in the Chief Magistrate's Court.
8. The applicant has invoked the provisions of Order 12 Rule 7 Civil Procedure Rules rather than the provisions of Order 51 Rule 15 of Civil Procedure Rules which are applicable herein. Order 12 Rule 7 relates to situations where judgment is entered in a suit as a consequence of non-attendance. The principle applicable in both provisions however are the same because both provisions invoke the discretion of the court. For a court to exercise its discretion in favour of an applicant, good cause and good faith must be demonstrated.
9. The applicant's counsel has failed to identify the alleged counsel she instructed to hold her brief. If she was candid she could have given the name of the counsel as a sign of good faith.
10. Nevertheless this court finds that for the wider interest of justice there is need to set aside the disputed order which I hereby do. The application dated 30/7/2025 will be fixed for hearing and I direct the applicant to take a date for the application and serve. I make no order as to costs.

DELIVERED, DATED and SIGNED at KITALE this6th day ofMAY....., 2026.

HON JUSTICE R.K. LIMO
KITALE HIGH COURT

Ruling delivered in open court

In the presence of

Paul Migwi Gathosi- the Applicant

No appearance for the respondent

Duke/Chemosop- Court assistants