



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLA E004 OF 2024

OUTER SPACE HOTELS LIMITED APPELLANT
VERSUS
DICKSON KARUME KARIUKI.....1ST RESPONDENT
NGATA MUNYINYI DENIS..... 2ND
RESPONDENT
GASTON MAINA NGONDI..... 3RD RESPONDENT
LAND REGISTRAR KIRINYAGA.....4TH RESPONDENT

RULING

- 1) This Ruling is on the notice of motion dated 10-6-2025. The motion which is by the 2nd and 3rd Respondents is brought under Section 3A of the Civil Procedure Act, Order 42 rule 23 of the Civil Procedure Rules, Article 50 of the Constitution and all other enabling provisions of the law.
- 2) The motion seeks two (2) residual prayers.

3. Setting aside of the judgment dated 29-4-2025 and the re-hearing of the appeal

4. Costs of the application.

- 3) The motion is based on four(4) grounds and is supported by the affidavit of the counsel for the 2nd and 3rd Respondents dated 10-6-2025. In summary, he states as follows. Firstly, the Appellant’s Counsel did not serve the Respondents’ Counsel with a hearing notice, mention notice or submissions contrary to Order 42 rule 17 of the Civil Procedure Rules and Article 50 of the Constitution. Secondly, no judgment notice was served upon counsel for the 2nd and 3rd Respondents and the judgment was therefore delivered in his absence. It was therefore not possible to appeal within time. Thirdly, the Appellant only served the notice of assessment of costs for the lower Court slated for 12-6-2025 and those for this Court slated for 2-7-2025.
- 4) The motion is opposed by the Appellant whose counsel has sworn a replying affidavit dated 20-7-2025 in which he replies as follows. Firstly, since the counsel admits service,

he was well aware of the appeal and its proceedings in this court. Secondly there was physical service of the record of appeal and supplementary record of appeal as per the affidavit of service dated 15-3-2024, service of written submissions by email as per the affidavit dated 6-11-2024 and further service by email as per the various annexed screenshots. Thirdly, the Respondents chose not to participate in the appeal despite ample notice. Fourthly, no oral hearing of the appeal was conducted and the motion does not meet the threshold of Article 50(1) of the Constitution as there was no violation of the right to a fair hearing.

- 5) I have carefully considered the motion in its entirety including the grounds, the supporting and supplementary affidavits, the replying affidavit and the annexures. I am unable to conclusively find that the Counsel for the 2nd and 3rd Respondents was served with a hearing notice, a mention notice and the submissions. This is primarily due to his denial of service coupled with the uncertainty of email service especially when there is no follow up call and acknowledgement of receipt. Given the above circumstances, I find that it is fair and just to allow the notice of motion dated 10-6-2025 which I hereby do in terms of prayer 3. Costs in the cause.

It is so ordered.

Dated, signed and Delivered virtually at Murang'a this 17th day of December, 2025.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of :-

Mwangi Njonjo - Court Assistant

Appellant's Counsel – Mr Ndungo

1st and 2nd Respondent Counsel – Mr Maina Kagio