

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA NAIROBI**  
**CIVIL APPELLATE DIVISION**  
**HCCA E 932 OF 2023**

**BAZAAR CARS LIMITED.....**  
**APPELLANT**

**VERSUS**

**SAS3 TRADING COMPANY LIMITED.....**  
**RESPONDENT**

**JUDGMENT**

1. The gist of this Appeal is that the Appellant seeks to defray the conditions set by the lower Court in allowing its application to set aside an exparte Judgement but requiring that the Appellant deposits the decretal amount in Court. The appellant had successfully set aside the exparte Judgement but failed to file defence on time and this appeal emanates from a second application to set aside an exparte Judgement. The single issue that that this Court needs to determine is whether the lower Court was right in giving a condition of setting aside the exparte Judgment.
2. As I have said above, this is the second application to set aside an exparte Judgement for the Appellant failed to file its defence on time. The second application was clearly prompted by execution process. The order to deposit the decretal amount was to safeguard the subject matter. The

Appellant submissions that it cannot raise the said amount cannot be regarded as a weighty issue because first there was an ex parte Judgement and secondly in case it loses at the lower Court, it still has to raise the said amount. Ex parte Judgements are not lesser 'Judgements 'at all. Time is of essence. If this Court was to take the narrative that they are lesser Judgments, then there would be a likelihood of parties taking advantage- not appearing at all and coming to have it set aside in order to buy time. I say this not because it is necessarily the case here.

3. The condition set by the lower Court was that the deposit be made in order to eschew execution. I shall dismiss this application as the amount would be safe for both parties if deposited to Court or an escrow account. In order to further safeguard this amount I shall add a condition that if the Appellant fails to make the deposit and the Respondent proceeds to execute, the amount realized after execution shall be deposited to Court by the Respondent in order to act as security. The application dated the 17th march 2023 is dismissed with costs.

**DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 26<sup>TH</sup> DAY OF JANUARY 2026.**

**HON L P KASSAN  
JUDGE**

**In the presence of;**  
**Magwa for Appellant**  
**Kimale holding brief Mganda for Respondent**  
**Carol - Court Assistant**

ORIGINAL