



**Ndovu Estates Ltd v Ntutu (Environment and Land Appeal  
E002 of 2023) [2026] KEELC 380 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 380 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT AND LAND APPEAL E002 OF 2023  
LN GACHERU, J  
JANUARY 29, 2026**

**BETWEEN**

**NDOVU ESTATES LTD ..... APPELLANT**

**AND**

**LETASUNA EZEKIEL NTUTU ..... RESPONDENT**

*(Being an Appeal from the Ruling of Hon. Samuel M. Mungai (CM)  
delivered on 1st August 2023, at Narok in Narok CMCC No,7 of 2018)*

**JUDGMENT**

1. This Appeal emanates from the Ruling of the trial court (Hon. S M. Mungai CM), which was delivered on 1<sup>st</sup> August 2023, wherein the court dismissed the Appellant’s Notice of Motion Application dated 6<sup>th</sup> April 2022.
2. In the above Notice of Motion Application, the Appellant herein as the Applicant had sought for various orders among them; that the Ruling delivered on 6<sup>th</sup> January 2021, be set aside and the Judgment delivered on 10<sup>th</sup> July 2019, by the trial court be confirmed; that the stay of execution entered against its regular Judgment of 10<sup>th</sup> July 2019, be lifted and/or vacated and the defence be ordered closed; that the plaintiff be at liberty to execute the Judgment of 10<sup>th</sup> July 2019 and a penal notice be inserted in the extracted order; that the costs of the application be borne by the Defendant( Respondent herein).
3. The facts that brought about the above Application are that; Civil Suit No. 7 of 2018 which was pending hearing before the trial court came up for hearing on 29<sup>th</sup> January 2019, and two counsel appeared holding brief for the counsels on record for the parties. By consent, the two counsels agreed to take out the matter, and a took a hearing date by consent being 26<sup>th</sup> March 2019.



4. On 26<sup>th</sup> May 2019 when the matter came up for hearing, Mr C.F Otieno appeared for the Plaintiff (Appellant now) and was ready to proceed. The counsel for the Defendant(Respondent) was absent, without any explanation, and no one to hold his brief. The Defendant was absent too.
5. The counsel for the Plaintiff(Appellant) submitted that the hearing date was taken by consent, and he was ready to proceed with his witnesses. The court noted that concern, and proceeded with the hearing in the absence of the Defendant. Two witnesses gave evidence in the favour of the Plaintiff and finally the matter was closed, with directions for written submissions be filed by 9<sup>th</sup> April 2019.
6. Judgment was delivered on 10<sup>th</sup> July 2019, wherein the court entered Judgment in favour of the Plaintiff for a sum of Ksh. 1,534,543/95, together with interest at the court's rates.
7. Subsequent to entry of the above Judgment, the Defendant filed an Application dated 22<sup>nd</sup> August 2019, wherein he sought for orders that; there be stay of execution of the Judgment and all consequential Orders flowing therefrom on record pending the hearing and determination of the application; that the court be pleased to review with the view to setting aside the orders made on 9<sup>th</sup> April 2019, ordering a close of the Defence case and fixing the matter for submissions and / or Judgment in the interest of justice as well as set aside the said judgment and the consequential orders on record and order the defence hearing to proceed; costs of the application be allowed.
8. After consideration of the above application and the written submissions, the trial court (G.N. Wakahiu CM) allowed the said Application in the following terms; there be stay of execution of the Judgment and all consequential orders flowing from therefrom on record; that the orders made on 9<sup>th</sup> Day of April 2019 ordering a close of the Defence case and fixing the matter for submissions and / or judgment are hereby reviewed and set aside and the judgment and the consequential orders emanating for the said proceedings is stayed and the matter to proceed for the defence; costs be in the cause.
9. With the above Ruling, the Judgment entered in favour of the Plaintiff(Appellant) was stayed and the Defendant was given an opportunity to advance in his defence by giving evidence and / or calling witnesses.
10. The above Ruling was delivered on 6<sup>th</sup> January 2021, and it was expected that the matter was to be set down for defence hearing. From the court's record, when the matter came to court on 17<sup>th</sup> February 2021, Counsel holding brief for Mr Ngaruiya for the Defendant (Respondent herein) informed the court that they would wish to cross examine the Plaintiff before defence hearing.
11. The court record is not clear whether the Application to recall the Plaintiff for cross examination was allowed or not, but the matter was set down for hearing on 13<sup>th</sup> April 2021. On this material date, the record shows that a M/s Kerubo held brief for Mr Otieno for the Plaintiff, but counsel for the Defendant, and the Defendant were absent.
12. However, on the particular date the trial magistrate recused himself from further hearing of the matter, and parties were advised to make an application to have the matter transferred to another court. The matter was not given a return date to court.
13. The next date of action was on 7<sup>th</sup> March 2023, when the then Chief Magistrate gave a mention date for 4<sup>th</sup> April 2023, and later a Certificate of urgent Application dated 6<sup>th</sup> March 2023, was given a hearing date for 4<sup>th</sup> April 2023.
14. The Application dated 6<sup>th</sup> March 2023, is the one that has given rise to this Appeal. On 4<sup>th</sup> April 2023, the court directed that the said Application be canvassed by way of written submissions, and subsequently, a ruling was delivered on 1<sup>st</sup> August 2023, wherein the court dismissed the



Plaintiff(Appellant) application dated 6<sup>th</sup> March 2023, and urged the Plaintiff to fix the matter for Defence hearing.

15. The Appellant (as the Plaintiff/Applicant) was aggrieved by the above trial court's ruling and he appealed against the said Ruling vide a Memorandum of Appeal dated 10<sup>th</sup> August 2023, wherein it urged the court to allow the appeal by setting aside the Ruling of the trial court delivered on 1<sup>st</sup> August 2023 and all the consequential orders issued thereof be set aside and in its place be replaced by the prayers sought in the Notice of Motion Application dated 6<sup>th</sup> March 2023, and costs of the Appeal be awarded to the Appellant.
16. Among the grounds of Appeal are;
  - i. The learned trial Magistrate erred in law and in fact by in one breath holding that the matter is the Plaintiff's case and almost immediately contradicting himself by holding that the defendant can only step in, in case of inaction by the Plaintiff to either set it down for hearing or apply for its dismissal.
  - ii. The learned trial magistrate erred in law and in fact in failing to hold that the Defendant cannot present his defence where the Courts Judgment is still intact.
  - iii. The learned trial Magistrate erred in law and in fact in failing to hold that the defendants only recourse was by way of Appeal in view of the Courts Judgment that was still intact.
  - iv. The learned trial Magistrate erred in law and in fact in stating that the Plaintiff cannot have its cake and eat it when it is trite law that if one is dissatisfied by a Judgment, the avenue available is to prefer an Appeal or Review if there are plausible grounds.
  - v. The learned trial Magistrate erred in law and in fact in stating at paragraph 14 of the Ruling that the Judgment had been set aside when in fact it had not.
  - vi. The learned trial Magistrate erred in law and in fact in suggesting that the setting aside of the Court's Judgment can be implied when in reality no such Order had been issued.
  - vii. The Learned Trial Magistrate erred in law and in fact in boldly trying to amend Statute law through a Ruling by suggesting that one Judgment can supersede another in the same suit without the necessity of setting the earlier Judgment aside.
  - viii. The Learned Trial Magistrate erred in law and in fact in admitting at paragraph 14 of the Ruling that "ideally the Judgment should have been set aside together with the other existing orders" and yet proceeding to dismiss the Plaintiffs application dated 6<sup>th</sup> March 2023.
  - ix. The Learned Trial Magistrate erred in law and in fact in failing to hold that though the defendant was granted leave to present his defence by Hon. Wakahiu (C.M), the said Honourable Chief Magistrate did not find it prudent to set aside the Judgment of his predecessor Hon. Gesora (C. M.).
  - x. The Learned Trial Magistrate erred in law and in Ordering the Plaintiff to move the Court by fixing the matter for hearing when the Judgment by Hon. Gesora (C.M) still subsists in the file.
  - xi. The Learned Trial Magistrate erred in law and in fact in holding that the Plaintiff's application dated 6<sup>th</sup> March 2023 is devoid of merit and proceedings to dismiss it.
  - xii. The decision of the learned trial Magistrate was contrary to law, the Oxygen Provisions, fact and reason and was an open display of bias and abuse of Judicial discretion.



17. The instant Appeal was canvassed by way of written submissions. The Appellant through the Law Firm of C. F Otieno & Co Advocates filed its written submissions and the Reply to the Respondent's submissions dated 12<sup>th</sup> November 2025 and 18<sup>th</sup> November 2025, respectively.
18. The Appellant submitted that the ruling of 6<sup>th</sup> January 2021, presented the following difficulties; the Judgment of 10<sup>th</sup> July 2019, was never set aside and is still in existence; the court ordered the matter to proceed for defence hearing; the defence was to proceed when there was a regular Judgment on record; was the court to write a second Judgment and how were the proceedings to be conducted?
19. On ground No 1, the Appellant submitted that the trial magistrate erred in law and fact when he failed to appreciate and give full effect to Section 7 of explanation No 5 of the *Civil Procedure Act* which states that when an applicant prays for something and the prayer is not granted by the court, then the prayer shall be deemed to be refused. Therefore, the trial court ought to have arrived at a finding that since the court did not set aside the judgment of 10<sup>th</sup> July 2019, then that prayer was not granted.
20. On ground No 2, the Appellant submitted that since the Judgment of 10<sup>th</sup> July 2019 has not been set aside to date, and the Respondent failed to set a date for defence hearing, then its regular Judgment still stands, and it had no obligation to fix the case for defence hearing.
21. On the other grounds, the Appellant submitted that no defence can be presented when the court's regular judgment has not been set aside. They argued that the Respondent should have appealed the Ruling of 06.01.2021, as the law does not permit a second review by the same party on the same subject. The Appellant further submitted that the trial Magistrate's holding that "the Plaintiff cannot have his cake and eat it" was misplaced, as the Plaintiff (Now Appellant) had a regular judgment, which was still intact, and was under no obligation to fix the case for defence hearing. Instead, it was the Defendant's/Respondent's responsibility to fix the case for defence hearing after obtaining orders to tender evidence in his defence.
22. The Appellants emphasized the importance of judicial integrity, stating that dissatisfaction with a judgment can only be addressed through setting it aside, applying for review, or appealing the judgment. They pointed out that the Ruling of 1<sup>st</sup> August 2023, by the trial court confirmed that the judgment of 10<sup>th</sup> July 2019, had not been set aside, and that a judgment and its setting aside must be explicit and cannot be implied.
23. Furthermore, the Appellant argued that subordinate courts lack jurisdiction to alter the law or issue rulings that contradict established legal principles, and the trial Magistrate's suggestion of one judgment superseding another in the same suit is legally unfounded.
24. The Appellant also raised concerns about the trial Magistrate knowingly delivering a controversial ruling despite the judgment still being intact, which they believe raises questions about judicial integrity. They suggested that the failure to set aside the Judgment of 10.07.2019, could imply that the trial court found no merit in the defence, and did not see the need to set it aside. They concluded that the Judgment of 10<sup>th</sup> July 2019 remains valid and can only be interfered with through an appeal, which the Respondent has not filed.
25. Further, the Appellant stressed that court orders must be explicit to ensure clarity, enforceability, compliance, procedural fairness, and proper record-keeping. They ultimately prayed for the appeal to be allowed, and for the orders made in the Ruling of 01.08.2023 be set aside.
26. The Respondent filed his written submissions dated 14<sup>th</sup> November 2025, through Maina Ngaruiya & Co Advocates, and submitted as follows: The appeal arises from the ruling delivered by Hon. Samuel Mungai on 1<sup>st</sup> August 2023, in Narok CMELC No. 7 of 2018. The Appellant, Ndovu Estates



- Limited, seeks to overturn the ruling and reinstate the Judgment delivered by Hon. Gesora of 10<sup>th</sup> July 2019, which awarded the Appellant Ksh. 1,534,543.95/= plus costs and interest.
27. The Respondent further submitted that though the Appellant argued that the Respondent failed to attend court for the defense hearing, leading to the Judgment in its favour, it was indeed the Appellant who failed to move the case forward as the suit belongs to the Plaintiff(Appellant), and that the Respondent has a right to present his defense.
  28. Further, that though the Appellant alleged judicial bias and abuse of discretion in the ruling, the Respondent argued and submitted that these claims are unsubstantiated and unsupported by evidence.
  29. For the above argument, the Respondent relied on these cases; Geoffrey Nduati Wainaina v Kenya Commercial Bank Ltd [2012] eKLR and County Council of Pokot v Kerio Valley Development Authority [2005] eKLR, which emphasize the Plaintiff's duty to pursue their case, and the principle that allegations of bias must be supported by credible evidence.
  30. In conclusion, the Respondent submitted that the appeal lacks merit and urged the court to dismiss it with each party bearing its own costs.
  31. The appellant filed a reply to the Respondent's written submissions, and addressed key points raised in the Appeal. The Appellant emphasized the distinction between two scenarios: one where the suit proceeds without a Judgment, making it the Plaintiff's responsibility to schedule hearings, and another where a judgment exists, leaving the Plaintiff's role unclear.
  32. The appellants argued that the judgment delivered on 10<sup>th</sup> July 2019, remains intact, and has not been explicitly set aside, as required under Kenyan law. Further, that the judgment can only be interfered with through specific legal avenues, such as an application to set it aside, a review, an appeal, or consent by the parties, none of which have been perfected in this case.
  33. The appellant also raised concerns about judicial bias, alleging that the trial magistrates displayed conduct which were favouring the Respondent. The appellant cited instances of procedural impropriety, such as the retention of the court file in chambers, which it argued created an uneven playing field and delayed appellate processes.
  34. Reliance was sought in the following cases; Republic v Attorney General and Another (2006) 2 EA 265(HCK) and "Rai v Rai (2013) KESC 20 (KLR) 6/2/2013) Ruling to support their claims of bias, abuse of power, and the duty of judicial officers to act fairly. Further, the appellant highlighted the importance of legitimate expectations and procedural fairness in judicial decisions.
  35. In conclusion, the appellant urged the court to find merit in their appeal, allow it as requested, and award costs. They also expressed concerns about the handling of the court file and the conduct of judicial officers, suggesting potential bias and irregularities that compromised the fairness of the proceedings.
  36. The above are the grounds in support of the appeal, the facts as contained in the Record of Appeal and the rival written submissions, which this court has carefully considered and it renders itself as follows;
  37. This is an Appeal emanating from Ruling wherein the trial court declined to allow the Appellant's Notice of Motion dated 6<sup>th</sup> March 2023, which had sought to set aside the Ruling of 6<sup>th</sup> January 2021, and confirm the Judgment of the trial court delivered on 10<sup>th</sup> July 2019.
  38. This being a first Appeal, as provided by Section 65 of the *Civil Procedure Act*, the court has a duty to consider both the facts and the law. Further, Section 78 of the same Act mandates this court to re-evaluate, re-consider, re-examine and re-assess the evidence that was adduced before the trial court and



then arrive at its own independent decision, while taking into account that it never heard nor saw the witnesses as did the trial court. This appeal is from a ruling, and thus no witnesses were called, but the trial court had handled the matter all along.

39. In the case of *Selle & Another vs Associated Motor Boat Ltd & Others*( 1968) EA 123, the court held;

“An appeal to this Court from a trial by the High Court is by way of a retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”

40. This court in its appellate jurisdiction will not simply set aside the trial court’s findings, just because it has been moved in an appeal. The court will give deference to the trial court’s findings, while considering that the said trial court has constitutional and statutory discretion to make findings and determinations just like this court. See the case of *Musa Cherutich Sirma vs Independent Electoral & Boundary Commission & 2 Others* (2019) eKLR.

41. Further, this court will not interfere with the trial court’s findings unless the said finding was based on no evidence at all or on misapprehension of the law and facts or where it is shown that the trial court acted on the wrong principles. see the case of *Mbogo vs Shah* (1968) EA 93, where the court held;

“[A] Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been injustice.”

42. This court being guided as above, and having considered the impugned Ruling, the Memo of Appeal, rival written submissions, cited authorities, the court finds the issues for determination are;

- i. Whether the instant appeal is merited;
- ii. Who should bear costs of this appeal.

### **I. Whether the Instant appeal is merited?**

43. The bone of contention herein is that the trial court declined to set aside its Ruling that was delivered on 6<sup>th</sup> January 2021, which ruling stayed the judgment of the trial court issued on 10<sup>th</sup> July 2019, and allowed the Defendant to avail his Defence.

44. In the said Ruling of 6<sup>th</sup> January 2021, the court stayed the Judgment of 10<sup>th</sup> July 2019, and did not set it aside. The essence of staying the Judgment and not setting it aside meant that the said Judgment is still existing, but cannot be executed, as it is stayed.

45. Stay of a Judgment or stay of execution is a court order that temporarily halts the enforcement or implementation of a court Decree or Judgment, usually while an appeal is pending. The said stay prevents the winner from immediately acting on the judgment, such as seizing property or eviction, to ensure the appeal is not rendered useless.

46. The proceedings that brought about the Ruling sought to be stayed is the Application dated 22<sup>nd</sup> August 2019, which had sought to stay the judgement of the court dated 10<sup>th</sup> July 2019, until the application is heard, and review and setting aside of the orders made on 9<sup>th</sup> April 2019, wherein he



- Defendant's case was closed, as well as setting aside the resultant judgement and its consequential orders.
47. After considering the argument for and against the said application, the trial court allowed the said application on the following terms;
    - i. There be a stay of execution of the judgement and all consequential orders flowing therefrom on record;
    - ii. That the orders made on 9<sup>th</sup> April 2019, ordering a close of the Defence case and fixing the matter for submissions and/or Judgment are hereby reviewed and set aside and the judgment and the consequential orders emanating from the said proceedings are hereby stayed and the matter to proceed for defence hearing.
  48. The appellant argued that after the said judgement was stayed, but not set aside and the Respondent as Defendant granted an opportunity to proceed with his Defence, he went into a lull and did not set the matter down for Defence hearing, and thus the application dated 6<sup>th</sup> March 2023, seeking to set aside the said ruling of 6<sup>th</sup> January 2021.
  49. The main contention in the application dated 6<sup>th</sup> March 2023 was that the trial court's Judgment dated 10<sup>th</sup> July 2019, was never set aside, but stayed, and therefore the Defendant could not tender his Defence while the said judgement was still pending.
  50. The trial court in its ruling of 1<sup>st</sup> August 2023, did appreciate that indeed the trial court ought to have set aside the Judgment of 10<sup>th</sup> July 2019 instead of staying it, and allowing the matter to proceed for defence hearing with an existing Judgment. It would indeed be absurd to have two Judgments in existence.
  51. However, this court just like the trial court in its ruling would not be certain what orders the trial court would have given after the close of defence. Could the trial court deliver another judgment or set aside the existing judgment? Answering these questions at this juncture would be speculative. The appellant should not have assumed that the trial court would have been unable to issue or deliver another judgement, while the first one was still alive but stayed, since the Appellant is not privy to what direction the trial court would take after the Defence was tendered. Further the Appellant should have sought for review of the said Ruling immediately after delivery on the basis that a Defence cannot be tendered while there was an existing Judgment which was not set aside but stayed.
  52. The Appellant alleged and submitted that while the Respondent had been given an opportunity to present its defence, he failed to do so, thus denying the appellant the fruits of its stayed judgment. However, it is imperative to note that as provided by Section 1B of the [Civil Procedure Act](#), every party in suit has a duty to assist the court in facilitating the overriding objective of the [Civil Procedure Act](#). Among the objective is to ensure that matters before the court are heard and determined expeditiously.
  53. The court will disagree with the Respondent that once he got his orders vide the Ruling of 6<sup>th</sup> January 2021, then he had to wait for the Plaintiff(Appellant) to set the matter down for defence hearing. In fact, the Respondent had the responsibility of ensuring the matter was set down for his defence hearing, since he is the one who had applied to be given an opportunity to do so (present his Defence).
  54. Since the Defendant(Respondent) did not fast track his defence hearing, the Appellant as the Plaintiff and the mover of the court through the Plaint, should have set down he suit for Defence hearing, serve the Hearing Notices to the Respondent(Defendant) and if on the date set for defence hearing the Respondent(Defendant) failed to turn up, then the appellant would have moved the court accordingly.



55. The Appellant did not set the matter down for hearing, but chose to file the Notice of Motion Application dated 6<sup>th</sup> March 2023, and it is the considered view of this court that the said application was premature. Though the Appellant alleged and submitted that the trial court did not set aside the Judgment of 10<sup>th</sup> July 2019, vide its Ruling of 6<sup>th</sup> January 2021, it is evident that the Appellant did not move the trial court for interpretation or review of the said Ruling until 6<sup>th</sup> March 2023, when the instant application was filed which was after a lapse of two years.
56. So did the trial court err in its ruling of 1<sup>st</sup> August 2023, in dismissing the appellant's application? The appellant submitted that the trial court did not set aside the judgement of 10<sup>th</sup> July 2019, but only stayed it, and certainly two judgments cannot be issued in the same matter. The trial court noted the ambiguity of the Order issued by the court on 6/1/2021, which order was on stay of the Judgment and not on setting it aside. Further, the trial court noted that once the Defendant(Respondent) presented his defence, then the trial court would replace the said judgement with an appropriate one. That finding is speculative, and since it is not clear what the trial court would do at the end of the trial, then this court cannot hold and find that there would be two judgements in existence at the end of the trial.
57. The application for setting aside calls on the court to exercise its discretion, and the trial court in its ruling of 1<sup>st</sup> August 2023, did exercise its statutory discretion while determining the Notice of Motion Application dated 6<sup>th</sup> March 2023, and declined to allow the said application. The court will not interfere with that discretion just because it has been moved in an appeal. See the case of Mbogo vs Shah (1968) EA 93. See also Order 12 Rule 7 of the Civil Procedure Rules which provides;
- “Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.”
58. As provided by Section 78 of the *Civil Procedure Act*, this court has a duty to re-consider the available evidence and come up with its own independent decision. The trial court in its Ruling allowed the Defendant/Respondent herein to present his Defence, and did set aside the proceedings of 9<sup>th</sup> April 2019, which had directed the close of the Defence and filing of written submissions.
59. However, instead of setting aside the Judgment of 10<sup>th</sup> July 2019, the trial court stayed the same, without setting it aside. That means that the Judgment of 10<sup>th</sup> July 2019 is still alive, but is lull, and cannot be enforced. That stay of execution present some difficulties, given that the Defendant has been allowed to present his defence.
60. Section 3A of the *Civil Procedure Act* mandates this court to issue orders that are necessary for the end of justice and to prevent abuse of the court process. With the above in mind, this court finds that the necessary orders herein is to make and/or issue an order that the judgement of 10<sup>th</sup> July 2019, delivered by Hon Gesora SPM, be and is hereby varied and set aside as provided by Order 12 Rule 7 of the Civil Procedure Rules.
61. Having set the Judgment of 10<sup>th</sup> July 2019, aside and having found that the Defendant(Respondent) had a duty to set down the matter for defence hearing, and so did the Appellant(Plaintiff), this court finds no reasons to fault the Ruling of the trial court dated 1<sup>st</sup> August 2023.
62. For the above reasons, this court finds and holds that the instant Appeal is not merited, and the court proceeds to dismiss it entirely. Considering the circumstances of this matter, the court directs that each party to bear its own costs of this appeal and lower court proceedings.



63. Having set aside the Judgement of 10<sup>th</sup> July 2019, the court remits the file (case) back to the Chief Magistrate Court at Narok for setting down the matter for Defence hearing. The Defendant to set the matter down for Defence hearing within the next 30 Days from the date hereof.
64. Failure to do so, the orders of dated 9<sup>th</sup> April 2019, which closed the Defence and the Ruling of 6<sup>th</sup> January 2021, by the trial Court will stand varied and set aside, and the Judgment of 10<sup>th</sup> July 2019, will remain a valid Judgment capable of enforcement.
65. However, for avoidance of doubt, the said Judgment of 10<sup>th</sup> July 2019, and the consequential orders are hereby set aside, and will only be revived or reinstated and enforced in default of setting the matter down for Defence hearing by the Respondent/Defendant herein, who had moved the trial court to set aside the exparte Judgment of 10<sup>th</sup> July 2019, and be allowed to present his defence.
66. The Respondent(Defendant) cannot now turn around and allege that it is the appellant (Plaintiff) who has duty to fix the matter for defence hearing.

Appeal dismissed accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 29<sup>TH</sup> DAY OF JANUARY 2026.**

**L. GACHERU**

**JUDGE**

Delivered online in presence

Elijah Meyoki - Court Assistant

Mr. C. F Otieno for Appellant

Ms. Lyona holding brief for Mr. Maina Ngaruiya for Respondent

**L. GACHERU**

**JUDGE**

**29/1/2026**

