

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT VOI

CIVIL APPEAL NO. E028 OF 2025

**SCANIA CREDIT SOLUTIONS (PROPRIETARY)
LIMITED.....APPELLANT/
APPLICANT**

=VERSUS=

**HUMPHREY LOWO GODFREY.....1ST
RESPONDENT**

**DREAMLINE EXPRESS LIMITED.....2ND
RESPONDENT**

**(Being an appeal from the judgment of Hon. T. N.
Sinkiyian (PM) in Voi CMCC No. E111 of 2022 delivered
on 28th May 2024)**

JUDGMENT

1. The 1st Respondent **HUMPHREY LOWO GODFREY** sued the Appellant **SCANIA CREDIT SOLUTIONS (PROPRIETARY) LTD** and the 2nd Respondent **DREAMLINE EXPRESS LTD** in Voi CMCC No. E111 of 2022.

2. The 1st Respondent was seeking general damages for pain and suffering, special damages of Kshs. 46,743/= future medical expenses and loss of earning and future capacity for injuries he sustained on 22nd December 2021 at Man-eaters Area along Mombasa - Nairobi Highway while travelling in motor vehicle registration No. KCU 965C Scania bus when the said motor vehicle was so negligently driven that the 1st Respondent was flung off the motor vehicle onto the road side thereby occasioning him serious injuries.
3. The 2nd Respondent who was the 2nd Defendant opposed the suit vide statement of defence dated 24th May 2022.
4. The 2nd Respondent blamed motor vehicle registration No. KBB 032Z/ZB 2436 and registration KBU 359D/ZE 3023.
5. The court entered interlocutory judgment against the Appellant for failure to enter appearance or file a defence.
6. The Appellant filed an Application dated 4th October 2024 seeking to set aside the exparte judgment but the trial court dismissed it on 3rd April 2025.

7. The court found the 2nd Defendant **DREAMLINE EXPRESS LIMITED** wholly to blame for the accident and assessed damages as follows:-

(i) General damages	Kshs. 3,500,000/=
(ii) Loss of earning capacity	Kshs. 900,000/=
(iii) Future medical express	Kshs. 179,500/=
(iv) Special damages	<u>Kshs. 4,550/=</u>
Total	<u>Kshs. 4,584,050/=</u>

8. The Appellant has appealed against the dismissal of the Application dated 4th October 2024 on the following grounds:-

- (i) The learned Magistrate erred in law and in fact in failing to find that service of the Summons and Plaint and/or on the Appellant was improper despite non-compliance with the provisions of Order 5 rule 3 of the Civil Procedure Rules thereby vitiating the interlocutory judgment and/or final judgment.**

- (ii) The learned Magistrate erred in law and in fact in failing to find that failure to effect service of the Notice of Entry of Judgment vitiated the Decree.**
- (iii) The learned Magistrate erred in fact and in law by finding the Appellant to be in default of appearance, yet the reasons leading to the delay in entering appearance and lodging its defence were legitimately and fully explained as being inadvertent, being that there was an unforeseen administrative oversight that led to summons not being brought to the attention of the Appellant's Directors.**
- (iv) The learned Magistrate erred in fact and in law in ignoring binding precedent from this Honourable Court set in Atlas Copco Customer Finance AB v Kundan Singh Construction Limited 92015) eKLR (Ochieng J) holding that a mistake by an employee of a party is a reasonable and excusable mistake that excuses for failure to enter appearance and lodge a timely defence.**

- (v) The learned Magistrate erred in fact and in law in fettering her discretion to set aside an interlocutory judgment by finding that the Appellant “requires much more than pleading that there is a defence that warrants being heard” despite binding precedent from this Honourable Court and the Court of Appeal that Courts ought to set aside interlocutory judgments where they are satisfied that the defence in question raises triable issues on its merits.**
- (vi) The learned Magistrate erred in fact and in law in failing to find that the Appellant had raised triable issues in its defence that ought to be heard on their merits despite the Appellant demonstrating a meritorious defence, being that it was not vicariously liable for the negligent actions of the driver of the motor vehicle in question, who was a third party who was neither employed by, nor an authorized agent of the Appellant.**

(vii) The learned Magistrate erred in fact and in law in prematurely dismissing one of the Appellant's defence to the suit, being that the Appellant is entitled under Order 1 Rules 15(1) and 24(1) of the Civil Procedure Rules to raise as its defence that it is entitled to an indemnity against another party to the suit, despite the Appellant demonstrating that this was a triable defence that ought to be heard on its merits as set out in Order 1 Rules 15(1) and 24(1) of the Civil Procedure Rules.

(viii) The learned Magistrate erred in fact and in law in finding that the Appellant knew of the existence of the underlying suit before the Magistrates Court despite the Appellant having adduced evidence to demonstrate that its Directors and the controlling minds of the Appellant were unaware of the suit.

(ix) The learned Magistrate erred in fact and in law in failing to find that Notice of entry of judgment was never served upon on the Appellant contrary

to Order 22 Rule 6 of the Civil Procedure Rules, rendering the impugned execution proceedings unlawful and liable to be set aside.

(x) The learned Magistrate erred in fact and in law by fettering her discretion to set aside an interlocutory judgment in finding that the Appellant's purported failure to offer security for due performance of the decree was a legitimate ground to decline to set aside the Judgment despite the Appellant's acknowledgment that it was willing to abide by such terms or conditions as may be just for granting the setting aside orders prayed in both the Supporting Affidavit to the subject application before the Magistrate and its submissions in support of the application.

(xi) The learned Magistrate erred in fact and in law by determining that the Appellant's prayers for leave to defend the suit were unfounded, yet the Appellant had presented good reasons for its failure to enter appearance and defend the suit in a timely fashion and had demonstrated triable

issues, and a draft defence to the court for consideration.

(xii) The learned Magistrate erred in fact and in law by finding that it would be unjust for the Magistrate Court to exercise its discretionary power to the 1st Respondent's detriment while the Appellant bears no burden at all for its inaction despite the Appellant having acknowledged that any prejudice to the 1st Respondent could be remedied by reasonable thrown away costs and that the Appellant had preferred justifiable reasons for its delay in entering appearance and lodging its defence.

(xiii) The learned Magistrate erred in fact and in law by determining that the Appellant would not suffer more harm than the 1st Respondent should the subject application be declined despite the effect of the impugned Ruling being to deny the Appellant:

(a) Its non-derogable constitutional right to be heard and to a fair trial under Article 50 of the Constitution of Kenya; and

(b) Its right to property guaranteed by Article 40 of the Constitution of Kenya especially noting that it was only a Financier of the 2nd Respondent (and which the said 2nd Respondent personally and/or through its agents owned, operated the bus whose alleged negligent operations resulted in the suit before the trial court)

(xiv) The learned Magistrate erred in fact and in law in making an incomplete finding that it was "questionable why legal documents would be received by the Appellant's Finance Department as opposed" (sic) despite the Appellant's full explanation that the Appellant's Legal Department is domiciled in its headquarters in South Africa with the Kenyan office only comprising sales and finance staff and that, as a result, the Appellant's procedures and practices

were for legal documents to be received by the Appellant's Financing Representative in Nairobi.

9. The parties filed written submissions as follows:- That the appellant challenges a ruling by the trial magistrate that declined to set aside an interlocutory judgment and subsequent decree entered against it.
10. The appellant argues that the trial court fettered its discretion by substituting a rigid blame analysis for the established legal test, which requires examining whether the default was due to an excusable mistake and whether the defence raises triable issues.
11. The appellant contends that the magistrate ignored binding authorities, including *Henner Kenya v Bundi* and *Saicare Enterprises Limited v Mana Pharmacy & another*, which hold that even if the reasons for failing to file a defence are unsatisfactory, the court should set aside a default judgment if the defence raises triable issues. The appellant also points to *Atlas Copco Customer Finance AB v Kundan Singh Construction Limited*, where the court excused an employee's mistake as long as it was not

designed to obstruct justice, a principle the trial court allegedly failed to apply.

12. The appellant emphasizes that it acted promptly upon learning of the execution, filing its application for stay and setting aside at the earliest opportunity, which demonstrates diligence and negates any intent to delay justice.

13. The appellant further argues that its draft defence raises two principal triable issues: first, that its interest in the subject motor vehicle was solely as a financier or lessor without possession, control, or operation, which was instead in the hands of the second respondent; and second, that the driver was neither its employee nor agent, thereby negating vicarious liability.

14. The appellant relies on *Tabitha Nduhi Kinyua v Francis Mutua Mbuvi & another* to support the principle that registered ownership or financier interest alone is insufficient to impose vicarious liability without proof of agency, authorization, or control.

15. The appellant notes that the trial court failed to address these triable issues in its ruling and instead

misapplied the legal standard by requiring more than a mere pleading of a defence, contrary to the principle that a triable issue need only merit ventilation at trial.

16. The appellant also contends that the trial court erroneously dismissed its alternative ground of defence regarding indemnity or contribution against the second respondent, which should have been tested at a full trial.

17. The appellant challenges the trial court's finding that it had prior knowledge of the suit based on receipt of pleadings by a staff member, Ms. Wachira.

18. The appellant argues that the court conflated receipt by an employee with corporate knowledge by the directors and legal department, who were unaware of the suit due to an innocent failure to escalate the documents.

19. The appellant cites *Global Real Estate Ltd v Scorpio Villa Enterprises Ltd* for the proposition that only de jure or de facto directors of a company can be held liable for the consequences of receipt or service of court documents.

20. The appellant also contends that the trial court erred in treating the absence of an offer of security as a basis to

decline relief, despite the appellant having expressed willingness to abide by just terms, including costs.

21. The appellant notes that there is no legal requirement under Order 10 Rule 11 to insist on security as a precondition for setting aside a judgment and that the Court of Appeal in *Yooshin Engineering Corporation v Aia Architects Limited* cautioned against imposing unconscionable conditions that frustrate access to a merits-based determination.

22. Additionally, the appellant highlights that it has since provided security for due performance of the decree pursuant to this Court's orders.

23. The appellant further submits that the trial court failed to properly balance the interests of the parties, ignoring the appellant's offer to compensate any prejudice through thrown-away costs and to allow the first respondent to proceed against the second respondent, who fully participated at trial.

24. The appellant argues that the denial of a hearing on the merits exposes it to execution for a substantial sum despite a prima facie defence, thereby infringing on its

constitutional rights to property under Article 40 and to a fair hearing under Article 50.

25. The appellant also takes issue with the trial court's characterization of the receipt of legal documents by the finance department rather than the legal department, arguing that the uncontroverted evidence explained the internal protocol and supported the excusability of the mistake.

26. The appellant contends that the court's dismissal of this explanation as an "internal issue" without considering its relevance was a misdirection.

27. Regarding service, the appellant argues that service on a corporation was not effected in compliance with Order 5 Rule 3 of the Civil Procedure Rules.

28. The appellant notes that the court itself had earlier flagged concerns about defective email service, which should have demanded strict compliance with physical service requirements thereafter.

29. While acknowledging receipt by Ms. Wachira, the appellant contends that she was not an officer authorized under Order 5 Rule 3 to accept service on behalf of the

corporation, and that the trial court erred by treating a mere receipt stamp as dispositive of proper service without interrogating whether the person served fell within the statutory category.

30. The appellant also raises the failure to serve a notice of entry of judgment as required by Order 22 Rule 6 before execution, noting that no such notice was served or filed with the first execution application. The appellant relies on *Shaffique Allibhai v William Ochanda Onduru T/A Ochanda Onguru & Company Advocates & Another* for the proposition that non-service of such notice renders execution wholly irregular and liable to be set aside *ex debito justitiae*.

31. The appellant concludes by praying that the appeal be allowed, the ruling and orders of the trial court set aside, the interlocutory judgment and decree set aside as against the appellant, leave to defend be granted, the warrants of attachment and sale be set aside, and the appellant be awarded costs of the appeal.

32. The 1st Respondent's submissions oppose the appeal filed by Scania Credit Solutions (Proprietary) Limited

against the trial court's ruling delivered on 3rd April 2025, which had dismissed the Appellant's application seeking to set aside judgment and stay execution.

33. The background to this matter is that the 1st Respondent had sued the Appellant and the 2nd Respondent jointly following a grisly road accident involving a motor vehicle registered in the names of both parties, seeking general and special damages arising from the accident.

34. The Appellant had filed an application in the trial court dated 4th October 2024 seeking to set aside the judgment entered on 28th May 2024 and for leave to defend the suit, arguing that although their Finance Representative had received the summons and pleadings at their business premises, she had failed to bring these documents to the attention of their legal department in South Africa due to being overwhelmed by numerous court documents in other matters against the Appellant.

35. The Appellant further contended that the 1st Respondent ought to have served them with the interlocutory judgment and subsequent court dates,

which would have alerted them to defend the suit. In response, the 1st Respondent maintained that service of summons and pleadings had been properly effected physically at the Appellant's offices, with documents received by Elizabeth Wachira who identified herself as the Human Resource Manager and affixed the company stamp and signature, which fact was not disputed by the Appellant.

36. The 1st Respondent argued that upon entry of interlocutory judgment on 18th July 2022 following the Appellant's failure to enter appearance, he was discharged from effecting further service of court dates upon the defaulting party.

37. The trial court dismissed the Appellant's application, finding that interlocutory judgment had been regularly entered upon satisfaction as to service of documents, that the internal mishandling of legal documents by the Appellant was an internal issue that could not be visited upon the 1st Respondent who had successfully prosecuted his case, and that the Appellant had failed to demonstrate triable issues in their draft defence since

they admitted to being joint registered owners of the subject motor vehicle and merely raised an indemnity claim against the 2nd Respondent which could be pursued independently.

38. The 1st Respondent now submits that the Appellant has raised fourteen grounds of appeal challenging the trial court's ruling, but fundamentally the Appellant has not met the conditions for setting aside a regular judgment.

39. The 1st Respondent contends that the judgment entered against the Appellant was regular, as service of summons and pleadings was properly effected in accordance with Order 5 Rule 3 of the Civil Procedure Rules.

40. The documents were served physically at the Appellant's physical address along Mombasa Road, and were received by Elizabeth Wachira who identified herself to the process server as the Human Resource Manager, which position qualifies as a principal officer of a corporation for purposes of valid service. Even though Ms. Wachira later described herself in her affidavit as a

Financing Representative, she did not dispute receiving the documents nor that it was within her duties to receive legal documents served upon the Appellant.

41. The 1st Respondent relies on the Court of Appeal decision in *James Kanyiita Nderitu & another v Marios Philotas Ghikas & another* which distinguishes between regular and irregular judgments, holding that a regular default judgment arises where a defendant has been duly served with summons but fails to enter appearance, and the court has unfettered discretion in determining whether to set aside such judgment taking into account factors including the reason for failure to enter appearance and whether the intended defence raises triable issues. In contrast, an irregular judgment arising from improper service is set aside as of right.

42. Since service was properly effected in this case, the judgment was regular and the trial court properly exercised its discretion in declining to set it aside.

43. The 1st Respondent further submits that the Appellant's explanation for failing to enter appearance, namely that their representative was overwhelmed by

numerous court documents and inadvertently failed to forward the suit documents to their legal department, does not constitute a sufficient reason to warrant setting aside a regular judgment.

44. The Appellant was served with summons in June 2022 but only took action in September 2024 after execution proceedings commenced, demonstrating indolence and lack of vigilance for which the 1st Respondent, who has diligently prosecuted his case while recovering from nearly fatal injuries, should not suffer prejudice.

45. Regarding the draft defence attached to the Appellant's application, the 1st Respondent aligns with the trial court's finding that it does not raise triable issues warranting setting aside the judgment, as the Appellant admits to being a joint registered owner of the subject motor vehicle and merely raises an indemnity claim against the 2nd Respondent based on an alleged agreement between them, which is an independent issue that can be pursued separately without disturbing the trial court's judgment against the 1st Respondent.

46. The Appellant's allegation that they were not served with notice of entry of judgment does not vitiate the decree, as that consideration does not arise in an application to set aside a regular judgment.
47. The 1st Respondent concludes by submitting that the Appellant's constitutional right to be heard must be balanced against the 1st Respondent's right to timely justice, and having failed to provide reasonable grounds for setting aside the regular judgment, the appeal lacks merit and should be dismissed with costs
48. This is a first appeal to the High Court from a ruling of the trial court delivered on 3rd April 2025, in which the learned magistrate dismissed the appellant's application to set aside an interlocutory judgment and the resultant decree.
49. The background to the matter is that the 1st respondent had sued the appellant and the 2nd respondent for damages arising from a road traffic accident. The appellant was served with summons but failed to enter appearance, leading to the entry of interlocutory judgment on 18th July 2022.

50. The appellant only moved the court in October 2024, after execution proceedings had commenced, seeking to set aside that judgment.

51. The trial court found that service had been properly effected upon the appellant at its known physical address, where the documents were received by a Human Resource Manager who stamped and signed the return of service

52. . The court further found that the internal mishandling of those documents by the appellant's staff was an internal issue that could not be visited upon the 1st respondent.

53. Regarding the draft defence, the trial court was not persuaded that it raised any triable issues warranting the setting aside of a regularly entered judgment.

54. Having carefully considered the rival submissions and the record of appeal, it is important to begin by restating the well-settled legal principles that govern the setting aside of default judgments.

55. These principles are drawn from a long line of authorities and have been codified in Order 10 Rule 11 of

the Civil Procedure Rules, which gives the court unfettered discretion to set aside or vary any judgment entered in default of appearance or defence upon such terms as are just.

56. There is a difference between an irregular judgment and a regular one. An irregular judgment is one entered where there has been no proper service of summons, and such a judgment is set aside *ex debito justitiae*, as a matter of right.

57. A regular judgment, on the other hand, is one entered following proper service, and the court retains a discretion whether or not to set it aside. In the instant appeal, it is common ground that the appellant was physically served with summons and pleadings at its offices along Mombasa Road.

58. The process server's return indicates that the documents were received by one Elizabeth Wachira, who identified herself as the Human Resource Manager and duly stamped and signed the same.

59. The appellant has not disputed that Ms. Wachira was its employee or that she was authorized to receive

documents on its behalf. In the circumstances, the interlocutory judgment entered against the appellant on 18th July 2022 was a regular judgment.

60. The trial court was therefore entitled, and indeed duty-bound, to exercise its discretion in determining whether or not to set it aside, and its decision on that discretionary power is not to be interfered with lightly by this appellate court unless it is shown that the trial court misdirected itself on the law or that its decision was plainly wrong.

61. The appellant has placed significant reliance on the decision of Ochieng J. in *Atlas Copco Customer Finance AB v Kundan Singh Construction Limited* [2015] eKLR to argue that an innocent mistake by an employee is an excusable error that should not shut out a party from being heard.

62. That case does indeed stand for the proposition that a mistake by an employee can explain a failure to take appropriate action, provided it was not designed to obstruct or delay the course of justice.

63. However, it is critical to note that in that very case, the court went on to emphasize that the next and more important question is whether the defence sought to be raised discloses any triable issues.

64. The court cited the celebrated case of Patel v E.A. Cargo Handling Services Limited [1974] EA 75 for the proposition that even where a judgment is regular, the court will not usually set it aside unless it is satisfied that there is a defence on the merits. As Sheridan J. put it in that case, a defence on the merits does not mean a defence that must succeed, but rather "a triable issue", that is an issue which raises a prima facie defence and which should go to trial for adjudication.

65. The trial court in this matter was therefore not only entitled, but required, to look at the draft defence and assess whether it raised any bona fide triable issues that would warrant the case proceeding to a full hearing.

66. Upon a careful examination of the appellant's draft defence, this court is constrained to agree with the trial magistrate's finding that it does not raise any triable issue against the 1st respondent.

67. The appellant's sole defence is that it was merely a financier or lessor of the accident motor vehicle and that it had no control, management, or operation of the said vehicle, which was exclusively in the hands of the 2nd respondent.
68. The appellant also asserts that the driver of the bus was not its employee or agent. While these assertions may well be true, they do not, without more, constitute a defence to the 1st respondent's claim against the appellant.
69. The 1st respondent's suit against the appellant is predicated on the fact that the appellant was, at the material time, a registered owner of the subject motor vehicle.
70. The law is well settled that the registration of a motor vehicle is prima facie evidence of ownership, and a registered owner is vicariously liable for the negligence of the driver of that vehicle unless it can demonstrate that the vehicle was let out under a hire purchase agreement and that the driver was not in its control.

71. Even then, the registered owner under a hire purchase agreement remains liable to third parties for injuries caused by the negligent driving of the vehicle, subject to any rights of indemnity it may have against the hirer.

72. The appellant's claim that it was a mere financier and that the 2nd respondent was the operator is, in essence, a claim for indemnity or contribution against the 2nd respondent.

73. As the trial court correctly observed, such a claim can be pursued independently and does not, in itself, defeat the 1st respondent's entitlement to judgment against a registered owner of the vehicle that injured him.

74. The appellant's defence does not challenge the occurrence of the accident, the fact of its registered ownership, or the quantum of damages awarded. It merely seeks to shift liability to the 2nd respondent.

75. While this may well be a valid claim over against the 2nd respondent, it is not a defence to the 1st respondent's claim.

76. The draft defence therefore raises no triable issue as between the appellant and the 1st respondent. There is simply no possible defence to the action as framed by the 1st respondent against this appellant.
77. The appellant has also raised a procedural argument regarding the failure to serve a notice of entry of judgment under the proviso to Order 22 Rule 6 of the Civil Procedure Rules.
78. It is argued that no such notice was served before execution issued, and that this renders the execution process irregular and liable to be set aside.
79. The purpose of that notice is to bring to the attention of a defaulting defendant the fact that judgment has been entered, thereby affording them one final opportunity to apply to set it aside before execution commences.
80. The record before this court confirms the appellant's assertion that no such notice was served. The 1st respondent's response that he was discharged from effecting further service upon entry of interlocutory judgment is a misapprehension of the law.

81. The entry of judgment does not discharge a plaintiff from complying with the mandatory procedural requirements that precondition execution.
82. The 1st respondent's obligation to serve the notice of entry of judgment is distinct from the earlier service of summons and is a statutory prerequisite to a valid execution. In the absence of such notice, the warrants of attachment and sale issued against the appellant were irregular and ought to be set aside.
83. However, the absence of the notice of entry of judgment does not lend itself to setting aside the judgment itself. It only renders the execution process irregular. The judgment remains standing unless and until it is set aside on its own merits.
84. On the question of delay, the court notes that the appellant was served in June 2022 but only moved the court in October 2024, a delay of over two years.
85. This is not a case of an applicant acting promptly upon learning of the judgment. The appellant only stirred to action when execution was imminent, which supports

the inference that it was content to slumber on its rights until it was rudely awakened by the auctioneer's hammer.

86. Even if the court were to accept the explanation that its employee inadvertently failed to escalate the documents, it is difficult to accept that this inadvertence persisted for over two years without any follow-up or inquiry from the appellant's directors or legal department.

87. The trial court considered this delay and was not impressed by the explanation. While this court might have been inclined to exercise its discretion differently had a triable issue been disclosed, the absence of a defence on the merits renders the delay and the explanation for it less critical.

88. If there is no defence to be tried, it matters little why the appellant failed to appear; setting aside the judgment would be an exercise in futility.

89. The appellant has invoked its constitutional right to a fair hearing under Article 50 and its right to property under Article 40.

90. These are fundamental rights that must be jealously guarded. However, the right to a fair hearing is not

absolute in the sense that it guarantees every litigant their day in court regardless of their conduct.

91. It must be balanced against the countervailing right of the 1st respondent to timely justice and to enjoy the fruits of a validly obtained judgment.

92. As the Court of Appeal has repeatedly stated, the court's discretion to set aside a regular judgment is intended to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake, but it is not designed to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice. In this case, the appellant's inaction for over two years, coupled with the absence of a viable defence, leads to the conclusion that the trial court properly balanced these competing rights in declining to disturb the judgment.

93. In the final analysis, the trial magistrate cannot be faulted for the exercise of her discretion. She properly directed herself on the law, correctly found that the judgment was regular, carefully considered the draft

defence, and arrived at the conclusion that it raised no triable issue as against the 1st respondent.

94. The fact that this court might have weighed the factors differently is not a basis for interfering with a discretionary decision, unless it is shown that the trial court acted on a wrong principle or that its decision was plainly unjust.

95. This court finds no such error. The only meritorious point raised by the appellant concerns the irregularity of the execution process due to non-service of the notice of entry of judgment.

96. That irregularity, however, does not vitiate the judgment itself but only the warrants of attachment and sale. Accordingly, the appeal partially succeeds on that limited ground, but the substantive ruling refusing to set aside the judgment is upheld.

97. The judgment of the lower court in favour of the 1st respondent against the appellant therefore remains undisturbed.

98. The warrants of attachment and sale issued against the appellant are hereby set aside for non-compliance

with Order 22 Rule 6, but the appellant remains liable to satisfy the decree.

99. In the circumstances, as the appellant has succeeded only on a technical point relating to execution and not on the substantive merits of setting aside the judgment, it is just that each party bears its own costs of this appeal.

**Dated, signed and delivered this 5th day of March, 2026
in open court at Voi High Court.**

**ASENATH ONGERI
JUDGE**

In the presence of:-

Court Assistant: Millicent

.....**for Appellant/Applicant**

.....**for Respondents**