

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

HCCC MISC. APPLICATION NO.E021 OF 2025

SAMUEL NGANGA MBURUAPPLICANT/INTENDED APPELLANT

VERSUS

RAHAB WAIRIMU NDIRANGU 1ST RESPONDENT

JOSEPH NDIRANGU NGIGE 2ND RESPONDENT

RULING

1. This matter is for mention for parties to take directions on the **Notice of Motion** application dated 26th November, 2025 and filed by the Intended Appellant/Applicant.
2. However, upon listening to both counsel for the parties herein, it has come out that the Applicant/Intended Appellant has filed a **Notice of Withdrawal** of application dated 2nd December, 2025 seeking to unconditionally withdraw the application for leave to appeal dated 26th November, 2025.
3. According to the Applicant, there should be no order as to costs against her in respect of this withdrawal because the intended application has not been served upon the Respondents.

4. The Respondents' counsel, **Mr Waithaka** while acknowledging the filing of the **Notice of Withdrawal of Suit**, has pointed out that the same was not served upon them hence their proceeding to file a Replying Affidavit dated 25th February, 2026 believing the Applicant was proceeding with the application. That notwithstanding, the Respondents' counsel confirms that they will abide by court's directions since it is clear that the Applicant is not keen with proceeding with the matter.

5. In considering the **Notice of Withdrawal** of the application for leave to appeal out of time, I have perused/checked the record on the e-portal (CTS) and confirm that indeed the Applicant filed a **Notice of Motion** application dated 26th November, 2025 seeking for orders that:-

a) He be granted leave to appeal out of time against the Judgment of Honourable Carolyne Nyaguthii Mugo (PM) delivered on 30th March, 2021 in Limuru Civil Suit No.283 of 2018.

b) There be a stay of execution of Judgment, Decree, Warrants of Attachment and all other consequential orders thereto emanating from the lower court's case namely Limuru Civil Suit No.283 of 2018, pending the filing, entry and determination of the Intended Appeal; and

c) Subsequently, the Respondent be enjoined against any form of adverse and negative interference with any of the Applicants properties pending the hearing and determination of the Intended Appeal herein.

6. The court, in consideration of the application on 28th November, 2025 issued directions on service of the application to enable the Respondents file and serve their response and for the same to be disposed of by way of written submissions. The matter was then fixed for mention on 4th March, 2026 for parties to confirm compliance and take a hearing date.
7. However, the applicant now seeks to have the application withdrawn with no orders as to costs while arguing that they did not serve the application upon the Respondents.
8. It is worth noting that there is no contention on the application being withdrawn as sought for by the Applicant/Intended Appellant. What is in contention is the issue of the withdrawal being allowed with orders on costs.
9. According to the Applicant, they did not serve the application upon the Respondents and so they should not be condemned to pay costs. And indeed a perusal of the court record and or a check on the Court Tracking System

(CTS) confirms that there is no Affidavit of Service filed by the Applicant/Intended Appellant that they served the Respondents and or their counsel.

10.The Respondents' counsel on the other hand has faulted the Applicant for not serving the Notice of Withdrawal upon them which is the reason they went to file the Replying Affidavit. He has not explained how he got seized of the application he has responded to. All he stated was that he does not always check the Court Tracking System to be able to know what has been filed. From his submissions to court, it can easily be discerned that he sighted the application on the Court Tracking System and that is why he became aware of it, hence the filing of the Replying Affidavit.

11.It is worth noting that the application and **Notice of Withdrawal** were filed within four (4) days of each other. It is therefore absurd that the Respondents' counsel could have sighted the application and not the Notice of Withdrawal of the one, moreso, considering the time he filed the Replying Affidavit.

12.From the analysis of the circumstances around the filing of the pleadings

herein, on a balance of probability, this Court finds that the Applicant's **Notice of Withdrawal** unlike the Replying Affidavit filed by the Respondents, was filed without undue delay. Therefore, the court allows the **Notice of Withdrawal** dated 2nd December, 2025 and proceeds to withdraw the **Notice of Motion** application dated 26th November, 2025 in its entirety with no orders as to costs.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU
THIS 11TH DAY OF MARCH, 2026.

D. O. CHEPKWONY
JUDGE

In the presence of:

M/S Jedida holding brief for Mr. Macharia counsel for the Intended
Appellant/Applicant

Mr. Waithaka counsel for the Respondents.

Court Assistant – Martin/Sakina