

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION**

MISC. APPL. NO. E493 OF 2023

**MOSES NYANDIEKA SIAGI1ST
APPLICANT**

**JOASH ABWANA OUGUTI.....2ND
APPLICANT**

VERSUS

EUNICE WAYUA MUMORESPONDENT

RULING

1. On 6/07/2026 the Applicants herein, by a **motion dated 3/07/2026** filed under a certificate of urgency sought orders for leave to appeal out of time against judgment of the trial court delivered on 26/05/2023 in favour of the Respondent in the sum of Kshs. 657,900 plus costs of the suit. Upon consideration this court granted the Applicants a temporary stay of execution pending inter partes hearing of the motion subject to the Applicants depositing security in court in the sum of Kshs. 250,000/= within 21 days of the order, with a default clause that if not complied with, the stay order would lapse automatically. The motion was to be heard inter partes on 31/07/2023.
2. On 31/07/2023 the Applicant failed to attend court to argue its motion. Pursuant to provisions of Order 10 of the CPR, the application was dismissed for want of attendance by the

Applicant to prosecute its motion. Thereafter on **17/5/2024**, the Respondent, under provisions of **Section 1A, 1B and 79G of the CPA, Order 42 of the Civil Procedure Rules** sought orders that the court be pleased to review its orders issued on 3/07/2023 allowing the Applicants motion dated 3/07/2023 and setting it aside; on ground that she had not been served with the Applicants motion.

3. The motion is supported by her Advocates supporting affidavit whereof it is deponed that she was denied a chance to be heard on the same and therefore sought court's indulgence in the interest of justice, by setting aside the dismissal order.
4. I have considered the impugned order of the court dated 31/07/2023. The Applicants motion was dismissed for nonattendance, and by the said dismissal, the conditional interlocutory stay of execution orders followed suit; they were vacated.
5. The Respondent now urges the court to set aside the dismissal order of the **motion dated 3/07/2023**. I am persuaded that the Respondent is not aware that the Applicants motion was dismissed; and by stating that she was not served with the motion, which the court noted, is in fact in her favour, as no stay order of execution is in place. The court proceeds to urge the Respondent to consider the prayers sought in the motion by the Applicants and find that there is no order in place upon which the court may proceed to review and or set aside.

6. In the end, the Applicants prayers in **motion dated 3/07/2023**, to wit;

a) **Leave to appeal out of time against the judgment of the trial court; and**

b) **Stay of execution of the said judgment are all now moot, the motion having been dismissed. Consequently, there is no bar against the Respondent proceeding to recover proceeds of its judgment in CMCC NO. E 12301/2021 delivered on 26/05/2023.**

Orders accordingly.

Delivered Dated and Signed at Nairobi this 16th April, 2026.

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JANET MULWA.

JUDGE