

**REPUBLIC OF KENYA**  
**IN THE HIGH OF KENYA AT MERU**  
**CIVIL APPEAL NO. E062 OF 2024**

**GRACE**

**KATHIKA.....APPELLANT/APPLICANT**

**VERSUS**

**SIMON**

**KINOTI**

**KITHINJI.**

**.....RESPONDENT**

**RULING**

1. For determination is the Notice of Motion dated 11/4/2025 pursuant to **Sections 1a, 1b, 3, 3a and 80 of the Civil Procedure Act, Order 45 Rule 1, and Order 51 of the Civil Procedure Rules**, seeking that:

**1. Spent.**

**2. This honorable court be pleased to order reconstruction of this physical file.**

**3. This honorable court be pleased to review orders issued on 28<sup>th</sup> November 2024.**

**4. This honorable court be pleased to issue an order of stay of the warrants of arrest dated 8<sup>th</sup> of April 2025 in Isiolo Magistrates court Civil case**

**number E075 of 2021 Grace Kathika v Simon Kinoti.**

**5. The costs of this application be in the cause.**

2. The application is premised on the grounds that since the delivery of the Ruling of 28/11/2024 dismissing the appeal for failure to file the Memorandum of Appeal, Record of Appeal and security, the Appellant has been unable to trace the physical file, thereby rendering it impossible to file her application for review. The appeal is arguable as her remand would greatly undermine her sickly health.
  
3. The Respondent swore a replying affidavit on 19/5/2025 in opposition to the application. He avers that his Party & Party Bill of Costs dated 30/8/2024 in Isiolo Chief Magistrate's Court Civil Case No. E075/2021 were assessed in his favour, and a certificate of costs was issued for the sum of Ksh. 85,000. Upon the Appellant's failure to show cause why she should not be committed to civil jail, warrants of arrest were issued against her on 8/7/2024. The Appellant's application dated 15/7/2024 for stay of

execution was dismissed on 28/11/2024, and subsequently, he successfully obtained warrants of arrest on 8/4/2025, but the Appellant filed the instant application in total disregard of the ruling of this Court dated 28/11/2024.

4. The Appellant swore a Supplementary Affidavit on 5/5/2025 in support of her application.
5. The application was directed to be canvassed by way of written submissions, which were duly filed by Counsel.

### **Determination**

6. Having considered the application, the replying affidavit, and the submissions by counsel, together with the authorities cited, I find the issue for determination to be whether the orders sought therein should issue.
7. Pursuant to the directions of Justice H. M Nyaga of 24/10/2024, a skeleton file was opened, and therefore, the prayer for the reconstruction of the file becomes superfluous.

8. In dismissing the Appellant's earlier application for leave to appeal out of time and stay of the warrants of arrest, the court noted that neither security had been furnished nor the record of appeal filed. The Record of Appeal has never been filed to date and neither had the Appellant furnished any security for the due performance of the decree. Her sickness cannot, in and of itself, constitute sufficient justification for

indefinitely keeping the Respondent away from enjoying the fruits of his lawful judgment.

9. Needless to state, the judgment sought to be appealed against was delivered in 2023 and the Appellant has not remitted a single cent towards the satisfaction of the decretal sum.

10.I find that the Appellant has come to Court with unclean hands and she cannot benefit from the discretion of this Court.

11. The upshot from the foregoing is that the application dated 11/4/2025 is in want of merit and it is hereby dismissed with costs to the Respondent.

**DATED AND DELIVERED AT MERU THIS 14<sup>TH</sup> DAY OF MAY, 2026.**

**S.M. GITHINJI -JUDGE**

**14/5/2026**

**In the presence of:-**

Mr. Mwirigi for the Respondent

Mr. Muthomi for the Applicant (Absent).