



**Faith & Hope Properties K Ltd & another v Kariuki (Civil Appeal
E1294 of 2024) [2025] KEHC 5504 (KLR) (Civ) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5504 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1294 OF 2024

AC MRIMA, J

APRIL 30, 2025

BETWEEN

FAITH & HOPE PROPERTIES K LTD 1ST APPELLANT

DAVID KABOGO RUTHIA 2ND APPELLANT

AND

JOHN WAGECHE KARIUKI RESPONDENT

*(Being an appeal from the Ruling and Order of Hon. Kiongo Kagenyo (RM/Adjudicator) in
Nairobi [Milimani] Small Claims Court Case No. E834 of 2024 delivered on 9th November 2024)*

JUDGMENT

1. This judgment relates to the main appeal and the Notice of Motion dated 11th November 2025 which sought a stay of execution of the decree in Nairobi [Milimani] Small Claims Court Case No. E834 of 2024 [hereinafter referred to as ‘the suit’] pursuant to the directions of this Court issued on 31st January 2025.
2. In the directions, the Court dispensed with the filing of the Record of Appeal and called for the lower Court file, thereby expediting the determination of this appeal. Parties were also directed to file their respective written submissions which they duly complied with, hence, this judgment.
3. Given the nature of the prayers sought in the Notice of Motion dated 11th November 2025, the application stands overtaken by events by the determination of this appeal. This Court will, therefore, render itself on the appeal which was against the ruling rendered on 9th November 2024.
4. In the Memorandum of appeal, the Appellants proffered the following grounds: -



1. That the trial court erred in law in failing to find that the Application to set aside *ex parte* Judgment had considerable merit.
 2. That the learned Adjudicator erred in law in failing to exercise his discretion and allow the Appellant an opportunity to participate and challenge the suit.
 3. That the learned Adjudicator misdirected himself on the law and *moreso* on the threshold for setting aside *ex-parte* Judgment.
 4. That the learned Adjudicator while visited with a Draft Defence which raises serious triable issues that this is a Land matter and therefore filled in the wrong forum and was improper and unconscionable in the circumstances.
 5. That the Learned Adjudicator erred in law by failing to recon that the intended defence raises critical issue that this was Land matter to which the provision of the Small Claim Court statutes to which Section 12 thereof ousted the jurisdiction of the Court.
 6. That the learned Adjudicator erred in law and fact by misdirecting himself on the wrong principles of law applicable.
 7. That the trial Magistrate totally misconstrued the law and misdirected himself by dismissing the Appellant's application to set aside the Judgment therefore exposing the Appellant to risk of execution.
 8. That the learned Magistrate erred in law by failing to consider the totality of the Appellant's submissions and thereby arriving at an erroneous decision by dismissing the application on a mere technical approach through the application of the wrong legal principles as established in such cases.
 9. That the Learned Adjudicator erred in law and fact by totally disregarding and/or evaluating the circumstances of the case before him and against the rules of Natural Justice, and indeed delivered the Ruling dismissing the setting aside application on a Saturday.
5. This Court has carefully considered the record, the parties' submissions and the decisions referred to therein. Section 38 of the *Small Claims Court Act* [Cap. 10A of the Laws of Kenya] defines the role of the High Court in respect to appeals from the Small Claims Court. The Court is the first and final appellate Court and the appeals should be only on matters of law. Further, the decision of the High Court is final.
 6. Through their respective written submissions, the parties properly reiterated the law governing the setting aside of default judgments. Discussions centered on both irregular judgments which ought to be set aside as of right [*ex debito justitiae*] and the regular judgments which may only be set aside on the basis of the discretion of the Court. This Court wishes not to regurgitate the said legal positions.
 7. Having considered this appeal, this Court finds that the trial Court was very keen in the manner it conducted the suit. Despite the suit having been filed in the time-bound Small Claims Court, the Appellants [then Defendants] were accorded two opportunities to file their responses to the Claim in vain. The chronology of the events was well captured in the impugned ruling. Therefore, the Appellants cannot claim that the default judgment was irregular and be set-aside as of right. The judgment was entered regularly and it can only be set aside upon satisfaction that the trial Court exercised its discretion contrary to the law.



8. The outcome of the Notice of Motion dated 31st July 2024 is what resulted to the instant appeal. In that application, the Appellants supported their quest for setting aside of the judgment through an affidavit sworn by the 2nd Applicant herein, David Kabogo. Whereas he amplified the urgency of the matter, he did not explain the delay in filing the responses. A party seeking to set aside judgment and calling upon a Court or Tribunal to exercise its discretion in its favour must sufficiently put forth the reason[s] as to why the response was not filed timeously. It is upon such disclosure that a Court or Tribunal will apply its legal mind in a bid to ascertain whether it ought to set aside the judgment as of right or to instead exercise its direction. If the party fails to do so, then chances of that application succeeding are extremely minimal, if at all any.
9. As pointed out earlier in this decision, the Appellants failed to explain their failure to file their responses and as such, it matters not whether they had any holding defenses or not. Further, it is on record that the Appellants exercised their rights in taking up other proceedings for the recusal of the trial Court and the filing of an application before the High Court to stay the proceedings in the suit. Whereas such actions cannot be faulted since the Applicants were acting within their rights, that was the more reason as to why they had to explain why they did not see it fit to instead file the responses in the suit. By putting in the explanation, this Court would be in a position to weigh the Appellants' rights against the constitutional command on expeditious disposal of disputes in Article 159(2)(b) of *the Constitution* and as engrained in the *Small Claims Court Act*.
10. Deriving from the foregoing analysis, this Court finds no fault in the manner the trial Court rendered itself on the matters in this appeal.
11. Consequently, the appeal is unsuccessful and the following final orders do hereby issue: -
 - (a) The appeal be and is hereby dismissed.
 - (b) Costs to be borne by the Appellants.
 - (c) File marked as closed.Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Mungai, Learned Counsel for the Appellant.

Mr. Mugo, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

