



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**CIVIL APPEAL NO. 134 OF 2018**

**EQUITY BANK LIMITED.....APPLICANT/APPELLANT**

**VERSUS**

**BETHSHEBA JEBICHI KIMELI.....RESPONDENT**

*(Being an Appeal arising from the ruling of Senior Principal Magistrate Honourable Wairimu in*

*Eldoret CMCC No. 347 of 2018 delivered on 30<sup>th</sup> October 2018)*

**RULING**

1. This is a Ruling on the Notice of Motion Application dated 10<sup>th</sup> June 2021 seeking orders that the court review, substitute or set aside the orders issued in 8<sup>th</sup> June 2021 marking the matter as settled.
2. The application is expressed to be brought under Order 45, Rules 2(1) of the Civil Procedure Rules of 2010, Sections 3A, 3B & 80 of the Civil Procedure Act.
3. The Applicant relied on their supporting affidavit and there was no response filed by the Respondents.
4. The application is based on the grounds that the appeal was mentioned virtually on 8<sup>th</sup> June 2021 and due to technical hitches that delayed the Applicant's counsel from joining the virtual session, the court marked the matter as settled ex parte. Further, that there is an apparent error on the face of the record, the Respondent has not complied with the consent decree and thus the matter cannot be marked as settled.
5. Having considered the issues raised by the Applicant in the pleadings, these are the issues I have identified for determination;

1. Whether the court should review/set aside/substitute the orders issued on 8<sup>th</sup> June 2021

**Whether the court should review/set aside/substitute the orders issued on 8<sup>th</sup> June 2021**

6. There is a consent on record dated 10<sup>th</sup> February 2020. Given that the Applicant was unable to attend the virtual court session on 8<sup>th</sup> June 2021 to confirm whether the Respondent had complied with the consent order it would not be in the interest of justice to allow the ex parte orders to stand.
7. The Applicant has shown that there was sufficient cause as to why he failed to appear in court virtually.

8. Upon perusal of the proceedings I noted that on the material date of the ruling, the record of the court contains an error where the Respondent's advocate was recorded as the appellant's advocate before being granted ex parte orders.

9. In the premises, I find that there are apparent errors on the face of the record of the court.

10. Pursuant to Order 51 Rule 15 of the Civil Procedure Rules I set aside the ex parte orders granted on 8<sup>th</sup> June 2021 and grant a date for mention to confirm compliance.

11. Costs in the cause.

**DATED AT ELDORET THIS 20TH DAY OF DECEMBER 2021**

**E. K. OGOLA**

**JUDGE**



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