



REPUBLIC OF KENYA



Baraka International Limited v County Government of Turkana (Commercial Case E002 of 2023) [2024] KEHC 10255 (KLR) (19 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10255 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
COMMERCIAL CASE E002 OF 2023
RN NYAKUNDI, J
AUGUST 19, 2024**

BETWEEN

BARAKA INTERNATIONAL LIMITED PLAINTIFF

AND

COUNTY GOVERNMENT OF TURKANA DEFENDANT

RULING

1. I have before me a Notice of motion dated 15th February, 2024 expressed to be brought under the provisions of Sections 1A, 1B, 3A of the [Civil Procedure Act](#), under Order 10 Rules 4 and 8 and Order 51 Rule 1 of the [Civil Procedure Rules](#). The applicant seeks the following orders:
 - a. That leave be granted to the Plaintiff to request for judgment in default of appearance against the Defendant in favor of the Plaintiff.
 - b. That judgment in default of appearance be entered against the Defendant in favor of the Plaintiff.
 - c. That the Costs of this application be awarded to the Plaintiff/Applicant.
2. The application is based on 5 grounds and an affidavit in support sworn by Yussuf Mohammed Farah. According to the applicant, the defendant was served with the requisite notice under Section 13A of the [Government Proceedings Act](#), Cap 40 of the Laws of Kenya. The Plaintiff filed and served the Defendant with a duly filed Plaintiff and summons to enter appearance on 20th November, 2023 via their email address at info@turkana.go.ke which email was addressed at the County Attorney.
3. The Applicant averred that the Plaintiff further served the same summons and Plaintiff on the Defendant via Postal services on the same day, with the County – Attorney as the addressee of the parcel, sent to Post Office Box Number 11-30500 Lodwar. That when the matter was slated for a hearing, the



Defendant was duly served with a Hearing Notice dated 26th January, 2024 and addressed to the County Attorney and sent via the Defendant's official email.

4. It was the applicant's position that despite having been served with the duly filed Plaintiff and Summons to enter appearance, the defendant has failed, refused and or neglected to enter appearance and/or file a defence to the Plaintiff.

Determination

5. Order 10 Rule 4 (1) and (2) of the [Civil Procedure Rules, 2010](#) which provide as follows:

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- (1) Where the plaintiff makes a liquidated demand only and the defendant fails to appear on or before the day fixed in the summons or all the defendants fail so to appear, the court shall, on request in Form No. 13 of Appendix A, enter judgment against the defendant or defendants for any sum not exceeding the liquidated demand together with interest thereon from the filing of the suit, at such rate as the court thinks reasonable, to the date of the judgment, and costs.
- (2) Where the plaintiff makes a liquidated demand together with some other claim, and the defendant fails, or all the defendants fail, to appear as aforesaid, the Court shall, on request in Form No. 13 of Appendix A, enter judgment for the liquidated demand and interest thereon as provided by sub-rule (1) but the award of costs shall await judgment upon such other claim.”

6. I have read through the Plaintiff's application and the affidavit in support. Indeed, the Plaintiff did serve the defendant with the summons and this can be confirmed by a series of court attendance by the defence counsel Mr. Ekal seeking leave of the court to be indulged so that he can file the necessary suit papers in response to the suit and interlocutory application. The defendant's counsel argument was that he was still seeking audience with the ICT directorate of the judiciary to be mapped as a party in the ensuing proceedings.
7. In such a scenario the court invoking its unfettered discretion, indulged the learned counsel to enter the appearance or file a defence as the case may be within the stipulated period. Apparently as the record reveals, that was never to be the case. Four months down the line, he might be still waiting to be mapped by the ICT directorate in Case No Lodwar High Court E002 of 2023. In taking the extreme step of entering default judgment, the court is satisfied that the conduct of the defendant and his legal counsel unequivocally shows that they have deliberately failed to appear in court with the intention of thwarting the proceedings, that they did not intend to diligently pursue their defence and their non-appearance was contumelious leaving the court with no option but to conclude that the interests of justice requires it to exercises its discretion to enter default judgment. I am also satisfied that there has been undue delay in the launching of his defence against the claim by the Plaintiff and under the circumstances where the Respondent or defendant has knowledge of all the legal proceedings and court processes against him, such delay cannot even be cured by an application or prayer for condonation. On the totality of this case, it is over 6 months down the line and the Respondent/Defendant throughout the Period has acquiesced on its rights and no amount of persuasion if there is any, which can excuse or fetter the discretion of this court.



8. The Plaintiff has now approached this court, applying for default judgment as a result of non-compliance with the timelines in the *Civil Procedure Act* and Rules. In this action, the Respondent seeks judgment in the sum of Kshs 49,567,646.8/= with interest at the court's rate and costs of the suit. On the basis of the matter as pleaded in the Plaint dated 2nd October, 2023, the jurisdiction of the court which comprises of inherent powers does exercise jurisdiction in a summary process without a plenary trial to enter judgment in favor of the Plaintiff with all attendant costs and interests until payment in full.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 19TH DAY OF AUGUST 2024

.....

R. NYAKUNDI

JUDGE

