



REPUBLIC OF KENYA



KENYA LAW
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**Wambugu v Nyangicha t/a Demax East Africa Co Ltd (Civil Suit
E018 of 2022) [2024] KEHC 10184 (KLR) (13 August 2024) (Directions)**

Neutral citation: [2024] KEHC 10184 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL SUIT E018 OF 2022
DO CHEPKWONY, J
AUGUST 13, 2024**

BETWEEN

BENARD WAMBUGU PLAINTIFF

AND

**EDWARD ONKOBA NYANGICHA T/A DEMAX EAST AFRICA CO
LTD DEFENDANT**

DIRECTIONS

1. The Plaintiff's claim against the Defendant is as elucidated in the Plaintiff dated 22nd July, 2022 where he seeks the following orders:-
 - a. Special damages in the sum of Kshs. 19,437,280/= (Kenya Shillings Nineteen Million Four Hundred and Thirty Seven thousand Two Hundred and Eighty) being outstanding debt owed to the Plaintiff.
 - b. General damages.
 - c. A declaration that the Plaintiff is entitled to aggravated damages for pain and suffering.
 - d. Costs of the suit and interest thereon.
 - e. Interest on (a), (b), (c) and (d) above.
 - f. Any other or further relief as this Honourable court may deem fit and just to grant in the circumstances of this suit.
2. Despite having been served on numerous occasions, the Defendant has failed to enter appearance or attend court and the Plaintiff urged the court to enter Judgment against the Defendant in default.



3. Looking at the prayers sought in the Plaintiff, this Court finds it is a mix of both liquidated and unliquidated claim. The law on such claims is found under Order 10, Rules 4 and 9 of the Civil Procedure Rules, 2010.

Order 10 Rule (4) provides that:-

[4]. (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.”

Order 10 Rule (9) states that:-

[9]. Subject to rule 4, in all suits not otherwise specifically provided for by this Order, where any party served does not appear the plaintiff may set down the suit for hearing.

4. A reading of the title on Order 10 of the Civil Procedure Rules provides for consequences of non-appearance, default of defence and failure to same.
5. A reading of Order 10 Rule 4 (2) of the Civil Procedure Rules provides for Judgment upon liquidated demand and the procedure to be adopted in such cases. It dictates that the Plaintiff requests for judgment in the manner provided for in Form No. 13 of Appendix A before the court can proceed to enter judgment. The wordings in this provision are in mandatory terms. It is trite that where there is law on procedure then the same must be adhered to. Therefore, since the Civil Procedure Rules provide for a procedure on consequences for non-appearance, default of defence and failure to serve, the court directs that the Plaintiff files the requisite request for Judgment in terms of Form No. 13 of Appendix A for the court to proceed by the manner provided for in the form.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED AT KIAMBU VIRTUALLY THIS 13TH DAY OF AUGUST, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Kuria holding brief for Mr. D. Wanjala counsel for Plaintiff

No appearance for and by Defendant

Court Assistant – Martin

