



**Gathungu & another v Ministry of Lands & Physical Planning & another (Commercial Civil Case E817 of 2021) [2022] KEHC 138 (KLR) (Commercial and Tax) (27 January 2022) (Ruling)**

Neutral citation: [2022] KEHC 138 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CIVIL CASE E817 OF 2021**

**JN MULWA, J**

**JANUARY 27, 2022**

**BETWEEN**

**ISAAC WANJOHI GATHUNGU ..... 1<sup>ST</sup> PLAINTIFF**

**ISABELLA NYAGUTHII WANJOHI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MINISTRY OF LANDS & PHYSICAL PLANNING ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Applicant, by their Notice of Motion application dated 29/10/2021 seeks that Judgment be entered against the 1<sup>st</sup> Defendant, Ministry of Lands and Physical Planning for failure to enter appearance and/or file a defence despite having been served with summons to enter appearance as by the law provided – Order 5 Rule 9 of the [Civil Procedure Rules 2010](#) (CPR).
2. The 1<sup>st</sup> Defendant is a Government Ministry. For judgment to be entered against a government body in default of appearance or defence, leave must be obtained from the court.
3. Order 10 Rule 8 of Civil Procedure Rules states:

“No judgment in default of appearance or pleading may be entered against the Government without the leave of the court and any application for leave shall be served not less than seven days before the return date”
4. In the Supporting Affidavit sworn by the process server, one Loise Njoroge, she served summons to enter appearance to both defendants on the 6/10/2021. They both signed and stamped at the face of the summons, to signify service upon them, by their legal officers.



5. I am satisfied that proper service was thus effected upon the 1<sup>st</sup> Defendant at its offices situated at Ardhi House, off Ngong Road Nairobi. The 1<sup>st</sup> Defendants stamp is appended at the face of the summons and dated 6/10/2021.

6. On the above basis, I allow prayer No. 1 of the application dated 29/10/2021.

**DATED AND SIGNED THIS 27<sup>TH</sup> DAY OF JANUARY 2022**

**HON. J. N. MULWA**

**JUDGE**

