

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

Civil Suit 641 of 2008

TRADE CIRCLES LIMITED.....PLAINTIFF

VERSUS

THE ATTORNEY GENERALDEFENDANT

R U L I N G

The Plaintiff herein filed this suit against the Attorney General on 29thg October 2008. It has now filed this Chamber Summons application under Order IXA rule 7 of the Civil Procedure Rules and Section 3a of the Civil Procedure Act seeking an order:

1. THAT this honourable court does grant leave to the Deputy Registrar of the High Court to enter judgment against the Honourable the Attorney General, the defendant herein in default of appearance and defence.

The application is grounded on the following:

1. THAT the Honourable Attorney General the defendant herein, has defaulted in filing any appearance or defence despite service of summons.

2. THAT leave of this Honourable Court is required before judgment in default of appearance can be entered.

3. THAT it is mete and just that leave is granted for the Deputy Registrar to enter judgment against the Honourable attorney General to enable the Plaintiff set the suit down for hearing.

There is also a supporting affidavit for the application.

I have perused the record of the case and documents filed. I see no affidavit of service on record for the service of the plaint and summons to enter appearance. All the Applicant has annexed to its supporting affidavit are copies of the plaint and verifying affidavit bearing a stamp from the Attorney General' office showing that the two documents were received in that office on 13th November, 2008. Without an affidavit of service there is nothing to show that the plaint and the summons to enter appearance were ever served. The Attorney General's stamp on the plaint and verifying affidavit are insufficient to establish service.

Order IXA of the Civil Procedure Rules deals with consequences of non-appearance and default of defence. Rule 2 of the order provides that where a defendant fails to appear and the Plaintiff wishes to proceed against such defendant, he shall file an affidavit of return of service of the summons. The filing of an affidavit of service or return of service is a condition precedent to obtaining leave for entry of judgment against the Attorney General. Without an affidavit or return of service, the Plaintiff application herein is incompetent and the same is struck out accordingly.

Dated at Nairobi this 20th day of February, 2009.

LESIIT, J.

JUDGE

Read, delivered and signed in presence of:

Mr. Gachoka for Applicant

.....for Attorney General

LESIT, J.

JUDGE