

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

Civil Case 751 of 2008

DAJOHN ENTERPRISES LIMITED PLAINTIFF

VERSUS

SCHOOL EQUIPMENT PRODUCTION UNIT LTD.....DEFENDANT

R U L I N G

The application dated 30/7/2009 was brought under the provisions of **Order XXI Rule 22** and **91 Civil Procedure Code**, **Order IXA Rules 10** and **11 Civil Procedure Code**, **Section 3A Civil Procedure Act**. Orders sought:-

- 1. Warrants of sale of property in execution 20/7/2007 be stayed pending hearing and determination of this application;**
- 2. That interlocutory judgment entered on 21/4/2009 in default of appearance and decree consequent thereto issued on 17/6/09 be set aside;**
- 3. That leave be granted to file the defence be deemed to be serviced;**
- 4. Costs be provided for.**

The grounds are set out. And the supporting affidavit of Benson Anyona and of Emmanuel Odoyo. The defendant is represented by the Attorney General of the Republic of Kenya. It is sworn that court summons requiring the defendants Entry of Appearance were brought to the defendant's offices on 4/3/2009. The defendant told the process server to return with the same.

On following day the summons were found thrown and stuck between the perimeter wall of the defendant's wall. The documents were thereafter taken to Permanent Secretary and it was taken to Legal Department who thereafter forwarded to Attorney General.

Eventually the appearance was entered on 10/6/2009. Later it was learned that the judgment had been entered ex parte and warrants of attachment and sale of property by public auction had been issued.

Regarding defence, defendant denied being indebted to the tune of Kshs.3,473,252/20 and avers that the documents were lost or burnt by fire. The Attorney General's court clerk has sworn an affidavit that he was given the office file on 30/3/09 with instructions to enter appearance. On 2/4/2009 the court file was lost, only to resurface on 10/6/2009.

In reply the defendant caused an affidavit to be sworn by David Mbugua Goi who is described as Director of the plaintiff. The summons was filed on 4/3/2009 and it is admitted by defendant.

I have read the record. It is correct to say even Government bodies are not exempt from obeying the law. However, the Rules of Procedure, **Order IXA 7** 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 7 days before the return day.”

There is nothing on the record to indicate that leave was sought to enter judgment. I therefore dismiss application and grant leave to file statement of defence within next 21 days of today's date.

Orders accordingly.

DATED, SIGNED and DELIVERED at Nairobi this 21st day of October 2009.

JOYCE N. KHAMINWA

JUDGE