

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 37 of 2008

CO-OPERATIVE INSURANCE COMPANY OF KENYA LIMITEDPLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI

DEFENDANT

RULING

Application dated 14/4/2008 seeking orders under provisions of **Order VIII rule 1 (2)** which states:

“where a defendant has been served with a summons to appear he shall, unless some other or further order be made by the court, file his defence within 15 days after he has entered an appearance in the suit and serve it on the plaintiff within seven days from the date of filing the defence.”

The respondent breached this order by failing to comply. The applicant has also invoked Section 3 and 3A of the Civil Procedure Act inherent powers of court and Order IXA rule 3, 9 and 11. Order IXA 2 permits the court to enter judgment in claims of liquidated sums where defence or appearance have not been filed. The applicant therefore seeks to strike out the defence for non service and enter judgment in the sum of Kshs9,092,853/= together with costs and interest. The application is supported by affidavit of Joseph Gatiko.

The defendant admits that the service of statement of defence was not effected according to the rules. He attributes the failure to human error. I have perused the defence and it is clear the same contains simple denials and does not show any substance.

In the circumstances I find the application is with merit. The statement of defence is incompetent for failure to comply with Order VIII 1 (2) and the same is struck out and expunged from the record. There being no merit or substance in the statement of defence judgment is entered for plaintiff against the defendant as prayed in the plaint plus costs and interest at court rates until payment in full.

The costs of this application shall go to the applicant.

It is so ordered.

DATED and DELIVERED at Nairobi this 7th day of October 2008

JOYCE N. KHAMINWA

JUDGE