



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**Civil Case 405 of 2006**

**DAVID M. MUTHEE T/A DAVETRONIC COMPANY .....PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL.....DEFENDANT**

**RULING**

The Plaintiff has brought a Chamber Summons application dated 27<sup>th</sup> October, 2006. The Plaintiff has come under Order IXA rule 7 of the Civil Procedure Rules. The Plaintiff seeks orders that leave be granted to the Plaintiff to apply for judgement against the Defendant in default of an appearance and defence and that judgement be entered as prayed against the Defendant. The affidavit in support of the application was sworn by the Plaintiff's advocate Samuel Njenga Mbugua. He states that he has the conduct of this matter and was instructed by the Plaintiff to file suit against the Defendant claiming Kshs.4,341,432/= being an amount owing to the Plaintiff under a contract of service with the Judiciary. Notice was given to the Honourable the Attorney General dated 8<sup>th</sup> June, 2006 as required by the Government Proceedings Act Cap 40. The said notice was duly received by the Defendant's office on 9<sup>th</sup> June, 2006. The Defendant on receiving that notice wrote to the Registrar of the High Court seeking instructions on the claim. The Plaintiff subsequently filed suit on 26<sup>th</sup> July, 2006. The summons and Plaintiff was served on the Defendant on 14<sup>th</sup> August, 2006. The Defendant ought to have filed memorandum of appearance on or before the 29<sup>th</sup> August, 2006. Plaintiff's advocate stated that the Defendant had not communicated with his firm seeking extension of time to file its pleadings in opposition to the Plaintiff's claim. That it is in the interest of justice in view of the failure to file the pleadings as stipulated that judgement be entered as prayed in favour of the Plaintiff.

I confirm that I have perused the Plaintiff's application, its affidavit in support and annexures thereof. Indeed the Plaintiff did give the Honourable the Attorney General Notice as required by Cap 40. I have also found that the Defendant was served with summons and the Plaintiff on 14<sup>th</sup> August, 2006. I have perused the court record and I have found that the Defendant has failed to file an appearance or a Defence as required. Order IXA Rule 7 provides as follows:-

**“No judgement 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 day”.**

Having considered the plaintiff's application I find that the same is merited. The Defendants were served with the application on 12<sup>th</sup> October, 2006. When the matter came for hearing on 1<sup>st</sup> November, 2006 the Defendants did not attend court. Accordingly the court would not deny the Plaintiff the prayers that are sought. The court grants the following orders:-

**(1) That leave be and is hereby issued to the Plaintiff to apply for judgement against the Defendant in default of appearance and of filing defence.**

**(2) That judgement be and is hereby entered in favour of the Plaintiff as against the Defendant for Kshs.4,341,432/= together with interest at court rate from the date of filing suit until payment in**

**full.**

**(3) The Plaintiff is awarded costs of this suit.**

Dated and delivered this 27<sup>th</sup> day of November, 2006.

**MARY KASANGO**

**JUDGE**