



Kombe v Sony Music Entertainment East Africa Limited (Insolvency Petition E555 of 2023) [2025] KEHC 5632 (KLR) (Commercial and Tax) (5 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5632 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E555 OF 2023**

JWW MONG'ARE, J

MAY 5, 2025

BETWEEN

MBAZULU KOMBE ALIAS HAYA MVITA PLAINTIFF

AND

SONY MUSIC ENTERTAINMENT EAST AFRICA LIMITED DEFENDANT

RULING

1. What is before this Court is a Notice of Motion application by the Defendant and is brought under Section 1A, 1B and 3A of the *Civil Procedure Act* and order 2 Rule 15 (1)(d), order 51(1) of the Civil Procedure Rules and it seeks the following Orders:-
 1. That this Honourable Court be pleased to strike out the Plaint dated 19th October 2023.
 2. That the costs of the Application be awarded to the Applicant.
2. The Application is supported by the grounds set on its face. It is opposed and the Plaintiffs have filed a replying affidavit sworn on 1st July 2024 by the Plaintiff. Both parties have filed written submissions which I have considered.
3. I have perused the record and note that on the application of the Plaintiff, this court entered interlocutory Judgment in default of defence. A further perusal of the record confirms that there has been no motion brought by the Defendant for the court to vacate the said judgment. I further note that to date, the Defendant has not filed its defence to the suit before this court, despite having filed the present application to strike out the plaint.
4. Order 7 rule 11 provides as follows:-
 - “ 1. Defence [Order 7, rule 1]



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 fourteen days after he has entered an appearance in the suit and serve it on the plaintiff within fourteen days from the date of filing the defence and file an affidavit of service.”

5. Filing of a Defence and Appearance signals to the court the intention by the party so sued to defend the suit. It is only after such a Defence has been filed that the Defendant obtains the necessary locus standi before a court to bring an application such as the one before the court presently, seeking to have the Plaintiffs suit struck out. In my view, a party who has not filed a Defence to a suit is deemed to have admitted the claim as filed. In the present case, judgment in default of Defence was properly entered by the court. Unless and until the said judgment is set aside, this court cannot entertain an application such as the one filed herein, seeking to strike out the plaintiff. In any event, the court must take evidence from the parties to determine if the suit raises no cause of action and is one fit for striking out.
6. I find therefore that the present application is without merit and dismiss the same with costs to the Plaintiff. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF MAY 2025

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

Ms. Chihaavi for the Plaintiff.

Mr. Wasonga for the Defendant.

Amos - Court Assistant

