



**Solio Ranch Limited v JS. & Co Hardware Ltd (Civil Appeal  
E035 of 2021) [2024] KEHC 10971 (KLR) (5 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 10971 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CIVIL APPEAL E035 OF 2021  
BK NJOROGE, J  
JULY 5, 2024**

**BETWEEN**

**SOLIO RANCH LIMITED ..... APPELLANT**

**AND**

**JS & CO HARDWARE LTD ..... RESPONDENT**

**RULING**

1. This Appeal arises from the order of ruling of Hon. Nelly Kariuki (PM) sitting at Nyeri. In that ruling the Court declined to allow the Appellant's Notice of Motion dated 12<sup>th</sup> June 2021. The motion sought among others a prayer seeking to set aside the default Judgement entered in the trial Court.
2. The Court at the same time considered a 2<sup>nd</sup> Notice of Motion dated 12/5/2021. It sought Garnishee orders against the Appellant's Bankers, to extract the funds held in their accounts.
3. Respondent filed a claim for Kshs.2,054,157/- plus costs and interest against the Appellant. The Respondent entered an appearance but delayed in filing a statement of defence. The Respondent sought interlocutory Judgement in default of a statement of defence. The same was awarded.
4. The Appellant challenged the interlocutory Judgement. The Respondent extracted a decree and applied for Garnishee orders against the Appellant's Bank. The trial Court consolidated the two applications. It dismissed the application for setting aside a default Judgment. It thereafter allowed the Garnishee orders sought. This is what has triggered the Appeal.
5. In as much as the claim was, liquidated, this is still an interlocutory Appeal. It flows from orders arising out of rulings made in the Suit, before the trial Court.
6. The Appellant has filed a Memorandum of Appeal citing four (4) grounds.
7. This matter was flagged for the Rapid Results Initiative for the month of June 2024. The parties have filed their respective submissions. The Court has considered the submissions as well as the authorities.



## Analysis

8. To this Court, the Appeal can be properly disposed of by framing a single issue.
  - a. Can a default Judgment be entered when there is a defence already filed?
9. In its Ruling the trial Court noted that a Memorandum of Appearance was filed on 23/10/2020 and thereafter a statement of Defence on 13/11/2020. The interlocutory Judgment was entered on 24/11/2020, long after the Statement of Defence had already been filed. A period of 11 days to be exact.
10. This means that by the time that the trial Court entered the interlocutory Judgment in default of a Statement of Defence, there was indeed a Statement of defence filed and on the record.
11. This Court relying on order 10 Rule 10 of the *Civil Procedure Rules*, notes the following.

“The provisions of rules 4 to 9 inclusive shall apply with any necessary modification where any defendant has failed to file a defence.”
12. A Defendant who has already filed a defence on record cannot be said to have defaulted in filling one. That would be like turning a table over its legs. It beats logic.
13. Another issue addressed in this ruling is the question of whether there was a formal Request for default Judgment. This Court did not find any copy. The trial Court did not find any copy. This Court is of the view that such a lapse should have concerned the trial Court. Which application was it acting upon when it entered interlocutory judgement? Who was moving the Court?
14. It may well be that the defence filed was filed out of time or that it raised no triable issues. This Court is of the view that such considerations should not bother the trial Court when considering whether to enter an interlocutory Judgment or not.
15. Once the trial Court saw a defence on the file, it ought not to have entered an interlocutory Judgment. If the Respondent was of the view that the Defence was hopelessly out of time or raised no issues, it would have moved the Court for appropriate orders under Order 10 Rule 3, for proper consideration by the trial Court. This would be through another procedures but not a request for default Judgement.
16. Ignoring the statement of defence on record grants credence to the Appellant’s grievance that it was shut or chased away from the seat of justice.
17. This Court is of the view that once a statement of defence is on the file the trial Court cannot proceed to enter an interlocutory Judgement.

## Determination

18. The Court allows the Appeal and proceeds to set aside the Orders made on 15<sup>th</sup> July, 2021 in Nyeri CMCC No. E022 of 2020 J. S. & Co. Hardware Limited – v- Solio Ranch Limited. The same are substituted with an order allowing the Notice of Motion dated 12<sup>th</sup> June 2021, setting aside the default Judgment herein, with costs.
19. The costs of the Appeal are awarded to the Appellant.
20. It is so ordered.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 5<sup>TH</sup> DAY OF JULY, 2024.**



.....

**NJOROGE BENJAMIN K.**

**JUDGE**

In the presence of:

No appearance for the Appellant

Mr. Ooko for the Respondent

