



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL DIVISION**

**HIGH COURT CIVIL CASE NO. 230 OF 2014**

**JOHN GICHERU THUITA.....1<sup>ST</sup> PLAINTIFF/APPLICANT**  
**CEASER MUCHIRI.....2<sup>ND</sup> PLAINTIFF/APPLICANT**  
**JACKSON KARIUKI KINGORI...3<sup>RD</sup> PLAINTIFF/APPLICANT**  
**JAMES MAINA MBUTHIA.....4<sup>TH</sup> PLAINTIFF/APPLICANT**  
**JOHN KARIUKI KINGORI.....5<sup>TH</sup> PLAINTIFF/APPLICANT**  
**GEORGE THUKU WAMBUGU...6<sup>TH</sup> PLAINTIFF/APPLICANT**  
**PAUL NDIRITU MWAI.....7<sup>TH</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**AGRICULTURE, FISHERIES**  
**& FOOD AUTHORITY.....1<sup>ST</sup> DEFENDANT/RESPONDENT**  
**ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The application dated 30<sup>th</sup> May, 2017 seeks orders that judgment be entered for the Plaintiff as against the 2<sup>nd</sup> Defendant as prayed for in the plaint.
2. It is stated in the grounds and the affidavit in support of the application that the 2<sup>nd</sup> Defendant was served with Summons to Enter Appearance, Amended Plaint and Verifying Affidavit together with the accompanying documents on 20<sup>th</sup> March, 2015. That the 2<sup>nd</sup> Defendant has failed to Enter Appearance or file a Defence. That the 2<sup>nd</sup> Defendant has continued to receive documents pertaining to this case but continues neglecting filing its documents, thereby causing delay in the suit.
3. The 1<sup>st</sup> Defendant did not oppose the application.

4. The application is opposed by the 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> Defendant filed the grounds of opposition dated 13<sup>th</sup> June, 2017 which states as follows:

**1. That the failure to file a defence is not intentional on the part of the 2<sup>nd</sup> Defendant.**

**2. That the application is therefore frivolous, vexatious and an abuse of the court process.**

5. I have considered the application, the response to the same and the submissions made by the respective counsels for the parties.

6. As at the date of the hearing of the application at hand, no defence or draft thereof was on the record. No replying affidavit was filed to explain the delay. The court has therefore not been told why there is no statement of defence on record. The 2<sup>nd</sup> Defendant's written submissions seem to be giving the reasons for the delay. However, submissions are not evidence.

7. Although it is stated in the 2<sup>nd</sup> Defendant's written submissions that the Memorandum of Appearance and the Statement of Defence were attached thereof, no such documents were attached. Indeed there are no such documents in the court file by the 2<sup>nd</sup> Defendant save for the grounds of opposition dated 13<sup>th</sup> June, 2017 and a Memorandum of Appearance.

8. In the case at hand, there are absolutely no reasons given why this court should exercise its discretion in favour of the 2<sup>nd</sup> Defendant. Consequently, I allow the application with costs.

**Date, signed and delivered at Nairobi this 14<sup>th</sup> day of Nov., 2018**

**B. THURANIRA JADEN**

**JUDGE**