



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CIVIL SUIT NO. 2 OF 2016**  
**OMINA BUILDING CONTRACTORS LIMITED.....PLAINTIFF**  
**Versus**  
**ISIOLO COUNTY GOVERNMENT.....DEFENDANT**

**JUDGMENT**

**Leave to enter judgment against county government**

[1] Before me is a Chamber Summons Application dated 17<sup>th</sup> May 2016 which is expressed to be brought pursuant to Order 50 Rule 1 and Order 10 Rule 8 of the Civil Procedure Rules 2010, Sections 3A and 63 E of the Civil Procedure Act and all other enabling provisions of the Law. In the application, the Applicant seeks the following Orders:

- 1. That this honorable court be pleased to grant leave to Enter Judgment in Default of Appearance against Isiolo County Government the defendant herein.***
- 2. That cost of this application to be in the cause.***

[2] The Applicant stated that the defendant was duly served with Summons to Enter Appearance on 15<sup>th</sup> April 2016 but did not enter appearance and or filed its statement of defence within stipulated time as by law required. But given the status of the Defendant, a county government, leave of the court is a mandatory requirement. Accordingly, the Applicant urged that it is only fair and just that leave should be granted and judgment entered in favour of the plaintiff against the defendant.

**DETERMINATION**

[3] I have carefully considered the application and also perused the court file. I note that the Defendant filed, albeit belatedly, an appearance. But despite that appearance, the Defendant has not filed defence to date. Although the application is for leave to enter and entry of judgment in default of appearance, I note that the Applicant led arguments for leave to enter judgment in default of defence, which makes that request an issue for determination by the court. As such, I will, therefore, consider this application within the ambit of default to file defence.

[4] In applications as this, service of summons and plaint is critical- the court must be satisfied that summons and plaint were served properly and in accordance with the law before granting leave or entering judgment in default of appearance or defence. From the affidavit of service filed, Summons and

Plaint were served on the on 15<sup>th</sup> April 2016 and acknowledged receipt thereof. Omambia Mososi Godfrey an authorized processed server deposed in detail how on 15<sup>th</sup> April 2016, he received copies of Summons to Enter Appearance and plaint from the firm of Ondabu and Company Advocates with instructions to serve them upon the Defendant. He averred that he then proceeded to the offices of the Defendant and met His Excellency the Governor who directed his secretary to stamp on the original Summons to enter Appearance. He further deposed that at the time of the service, the Governor was not known to him but he was pointed out to him by one Mohammed Ali, one of the directors of the Plaintiff. On the basis of the disclosed facts, I do not see anything strange or wanting as to make me doubt these averments in the affidavit of service. Accordingly, summons and plaint were duly served as by law required.

[5] On 18<sup>th</sup> May 2016, the Defendant was also served with this application and a notice of hearing thereof. See the affidavit of service sworn by Omambia Mososi and filed in court on 19<sup>th</sup> May 2016. And I believe that service awakened the Defendant into filing Appearance on 2<sup>nd</sup> June 2016 but the Defendant did not attend court for the hearing of the application. Order 10 Rule 8 of the Civil Procedure Rules has been satisfied here.

[6] Hitherto, despite the entry of appearance, the period for filing defence has lapsed, i.e. fourteen day after entry of appearance and no defence that has been filed. On this see Order 7 rule 1 of the Civil Procedure Rules. I have meticulously perused the file and I have not seen any defence filed by the Defendant. Now, therefore, taking into account the totality of the circumstances of this case, this case is a perfect candidate for grant of leave and entry of judgment against the Defendant. In the upshot I find the application dated 17<sup>th</sup> May 2016 to be meritorious and I accordingly grant leave to, and enter judgment for the Plaintiff and against the Defendant as pleaded in the plaint, except however, interest on the principal liquidated sum in prayer (b) of the plaint shall be at court rate of 12% from the date of the filing suit until payment in full. The case shall be set down for assessment of general damages for breach of contract. It is so ordered. The Plaintiff will also have costs of this application.

**Dated, signed and delivered in open court at Meru this 14<sup>th</sup> day of**

**July 2016**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

Mr. Odambu advocate for the plaintiff

No appearance for defendant.

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**F. GIKONYO**

**JUDGE**