



**Chemoquip Limited v County Government of Garissa (Civil Case
E001 of 2025) [2025] KEHC 16322 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16322 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CIVIL CASE E001 OF 2025
JN ONYIEGO, J
NOVEMBER 13, 2025**

BETWEEN

CHEMOQUIP LIMITED PLAINTIFF

AND

COUNTY GOVERNMENT OF GARISSA DEFENDANT

RULING

1. The application before the court is a notice of motion dated 15.10.2025 brought pursuant to order 10 rule 8 and order 51 rule 1 of the civil procedure rules and Section 3A of the [civil procedure Act](#) seeking for orders that:
 - i. The Honourable Court be pleased and hereby grant leave to the plaintiff/applicant for the purpose of applying for judgment in default against the defendant/respondent for the consequences of non – appearance and default pf defense.
 - ii. This Honourable Court be pleased to grant any other such orders and/or reliefs that may be befitting in the circumstance.
 - iii. The cost of this application be provided for.
2. The application is based on the grounds particularized on the face of it and further supported by the affidavit of Feroz Nawab, the director of the plaintiff/applicant sworn on 15.10.2025. He deposed that the plaintiff lodged the suit herein against the defendant and proceeded to serve summons to enter appearance, plaint, list of witnesses, witness statements and annexures. That despite service of summons and mention notices, the defendant/respondent has failed to enter appearance and /or file defence as required within the prescribed time. It was averred that noting that the rules require that an application for leave must be sought in a case where the government is the defendant, this court was urged to grant the prayer sought.



3. I have considered the application before me and oral submissions by the applicant's counsel. The only issue which germinate for determination is whether the application is merited.
4. In its quest to verify the averments by the plaintiff/applicant, this court has the record and specifically, the affidavit sworn on 03.06.2025 by Stanley Wachira, a court process server wherein he deponed that on 29.05.2025, he received a copy of summons to enter appearance dated 21-05.2025 together with a plaint, verifying affidavit, plaintiff's list of witnesses, witness statements, list of documents and annexures from the firm of Kojo Law and Co. Advocates with instructions to serve upon the defendant/respondent.
5. That on the same day, at 12.37 p.m., he proceeded to the defendant's office where he met a secretary who referred to herself as Lucy who upon introducing himself and the purpose for his visit received the said documents which she handed over to one Paul Karongo who received the documents and further signed his return documents. He thus confirmed that indeed, he served the pleadings to the defendant/respondent.
6. Further, the said process server filed affidavits of service sworn on 11.08.2025 and 26.09.2025 stating that the pleadings together with Mention Notices for the respective dates were served upon the office of the County Secretary on behalf of the defendant/respondent who acknowledged receipt by stamping.
7. It is trite that Order 10 Rule 8 of the Civil Procedure Rules provides that: -

“No judgment 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”.
8. It therefore follows that the rule leaves no doubt and invites no argument on the duty to seek leave of the court before entering a default judgment against government and its departments. There is just no alternative beyond seeking and obtaining leave of the court before a default judgment can be entered against such a party. See the case of Gulf Fabricators Ltd vs County Government of Siaya, [2020] eKLR, where Aburili J. observed that: -

“... I note that the application dated 11/7/2017 filed on 12/7/2017 sought for leave of court to be granted to the plaintiff for judgment to be entered against the defendant in default of entering appearance and filing a defence...”
9. In the instant application, the plaintiff/applicant urges this court to exercise its discretion in the obtaining circumstances to grant it leave to apply for a judgment in default order against the defendant/respondent.
10. Having in mind the circumstances herein together with the provision(s) of the law, it is my finding that the respondent was duly served with the requisite suit documents but refused to enter appearance nor file defence. Accordingly, it is my holding that the application herein is merited hence allowed as hereunder.
 - i. That an order of leave be and is hereby granted to the plaintiff/applicant for the purposes of applying for judgment in default against the defendant/respondent for the consequences of non-appearance and default of defence.
 - ii. Costs shall be in the cause.

DATED,SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF NOVEMBER 2025



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J.N.ONYIEGO

JUDGE

