



REPUBLIC OF KENYA



Meru University of Science of Technology v Monarch Insurance Company (Civil Case E007 of 2024) [2025] KEHC 17195 (KLR) (20 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17195 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL CASE E007 OF 2024
HM NYAGA, J
NOVEMBER 20, 2025**

BETWEEN

MERU UNIVERSITY OF SCIENCE OF TECHNOLOGY PLAINTIFF

AND

MONARCH INSURANCE COMPANY DEFENDANT

RULING

1. This ruling relates to two applications. The first in time is the Objector's application dated 15th April, 2025 seeking:-
 - i. Spent.
 - ii. Pending the inter-parties hearing and determination of this application, an interim order be issued staying the execution by proclamation, attachment and or sale of the proclaimed assets of the Objector being 100 office tables, 400 office chairs, 5 water dispensers, 60 laptops, 20 printers, 150 compute sets as particularly described on the proclamation form dated 14.04.2025 including any other moveable attachable assets of the Objector in the possession of the Judgment Debtor.
 - iii. This Honourable court be pleased to set aside and quash the proclamation, attachment and sale of the assets of the Objector particularly described on the proclamation Form dated 14 4 2025 annexed to the application based on the Grounds set out herein and the Notice of Objection to attachment filed.
 - iv. The proclamation and attachment for sale of the Objector's assets particularly described on the proclamation Form dated 14 4 2025 annexed to this application including any other moveable attachable assets of the Objector in the possession of the Judgment debtor be lifted and declared null and void.



- v. A declaration that the proclaimed moveable assets of the Objector in the possession of the Judgment Debtor are not attachable in Execution of the Decree in this matter
 - vi. The costs of this application be awarded to the Objector.
2. The Objector's application is premised on the grounds set out on the face of the it and is supported by the affidavit of Samson Macharia Munene, the company Secretary of the Objector. The said Munene, depones that Lifeline Auctioneers levied a Proclamation against the objectors' assets, purportedly in executing of a decree of this court.
 3. It is further deponed that the proclaimed assets belong to the Objector but are in possession of the defendant Judgment – Debtor by virtue of a case between them dated 7th March, 2023.
 4. That the judgment debtor has no proprietary or equitable interest whatsoever in the proclaimed property.
 5. The Objector further states that it is for the above reasons it filled the Notices of Objection herein, and that the Auctioneer should be restrained from attachment and sale of the said property. The Objector also seeks Orders, lifting the attachment levied on its goods.
 6. In response, the plaintiff filed a replying affidavit sworn by one Sharon Koskei, its Chief Legal Officer. She depones that the application is a well-crafted ploy by the applicant and the defendant herein to scuttle the Judgment herein.
 7. That when the proclamation was served, it was received by the defendant and not the Objector herein. That a cursory look at the purported lease agreement show that none of the goods attached form part of the schedule of assets described therein and as such, there is no proof that they belong to the applicant objector.
 8. That having been leased then the said goods are not the defendant's property. That there is no lease for 2024 exhibited by the Objector.
 9. The plaintiff respondent urged the court to dismiss the application and allow the execution to proceed.
 10. The second application is the Defendant's application dated 17th April, 2025 seeking the following orders:-
 - i. Spent.
 - ii. That this Honourable court be pleased to set aside the Interlocutory default Judgment entered on 11th April, 2024 and all consequential orders therein.
 - iii. That pending hearing of the application inter-partes, there be a stay of execution of the Judgment entered by this Honourable Court on 20th March, 2025 and all consequential orders therein.
 - iv. That this Honourable court be pleased to grant leave to the Defendant applicant allowing it to file it defence out f time and that the defendant applicant's, statement of defence attached hereto be deemed duly filed upon payment of the requisite court fees.
 - v. That the costs of this application be provided for in the cause.
 11. The application is supported by the grounds that are set out on the face of it and the affidavit of Sheila Swaka, its Senior Legal Officer sworn on 17th April, 2025.



12. The defendant's case is that it was undergoing organizational restructure, which adversely affected its ability to respond to any suit. That the defendant was never served with the pleadings or an opportunity to defend the suit.
13. That upon discovery of the Judgment herein, it took steps to instruct counsel. That the defendant has a good defence and raises tribal (sic) issues, as evidenced by the draft defence filed.
14. In response, the plaintiff respondent filed a replying affidavit sworn by the said Sharon Koskei. She branded the application as being frivolous vexatious and snared with unsubstantiated allegation.
15. She deponed that the defendant was duly served with the pleadings herein and duly acknowledged receipt, but failed to take the necessary steps to defend the suit. That the court proceeded with the hearing on being satisfied that service was proper.
16. It is further deponed that the defendant has no triable defence as it had made on proposal on how to settle the three claims which the plaintiff agreed. That four (4) ears later, the applicant is yet to settle any of the claims, despite compliance by the claimants.
17. The plaintiff urged the court to dismiss the application with costs and to order that the applicant to settle the decretal sum.
18. In my view, although the defendant's application was filed later in time, it ought to be considered first since the outcome will determine the necessity to consider the Objector's application.

Defendants Applicant's Submissions

19. It was submitted that the circumstances that were alluded to were characterized by unforeseen challenges, which impaired its ability to promptly respond to claims. That the failure to file defence was not a willful disregard of the authority of the court, but from circumstances beyond its control.
20. It was further submitted that this court, under the principles set out under Article 159(2) of *akn ke act 2010 constitution the Constitution*, has the discretion and obligation to ensure that the principles of natural Justice are upheld. Cited was the case of Nicholas Kiptoo Arap Salat Versus IEBC and 7 Others (2015) eKLR.
21. Further reliance was laid on the American Decision of Godberg – versus Kelly 397 US 254 267 (1970) and James Kanyita Nderitu & Ano. Versus – Marios Philotas Ghikas & another (206) eKLR.
22. The plaintiff did not file any submissions on this application. Nevertheless, I have considered the response filed.

Analysis & Determination

23. Although the defendant alleges that it was never served with the pleadings herein, there is ample evidence to prove otherwise. The summons were duly served upon it and it acknowledged receipt thereof. It failed to enter any appearance and the matter proceeded ex-parte.
24. Therefore, the judgment that was delivered was regular and properly entered. As such the matter calls for the discretion of the court, which has power to set aside a default judgment under Order 10 Rule 11 of the Civil Procedure Rules which provides as follows.

“Setting aside judgment [Order 10, rule 11.]



Where judgment has been entered under this Order the court may set aside or vary such judgment and any consequential decree or order upon such terms as are just.”

25. In *Shah Mbogo Versus* (1967)EA 116 the court held as follows, regarding such discretion;

“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.”
26. The question that the court has to answer when deciding to exercise its discretion is whether sufficient reasons have been adduced to invoke the court’s powers.
27. I have considered the reasons adduced and I find that there may be some element of truth, in explaining why the defendant failed to enter appearance and file defence.
28. I also agree that the court ought not to shut out a party from the seat of justice, however weak its case may be. The right to be heard and not be condemned unheard is a cardinal principle of natural justice.
29. Having looked at the matter, I find that the best course to take is to offer the defendant a chance to have its case heard.
30. Consequently, I make the following orders: -
 - a. The ex-parte judgment is hereby set aside, on condition that the applicant pays throw away costs to the respondent assessed at Ksh. 50,000 =, within 15 days of this ruling.
 - b. In default of the above, the Judgment shall be reinstated automatically and execution may proceed.
 - c. The defendant to file and serve its defence within the next 14 days. The plaintiff may file further pleadings as set out in the Rules.
 - d. The defendant will also pay any auctioneers fees accrued upon the decree, if any, to be agreed or taxed.
31. Having dealt with the above application, I find that the Objectors’ application has been rendered moot. There shall be no orders as to costs on the said application.

DATED, SIGNED & DELIVERED AT MERU THIS 20TH DAY OF NOVEMBER, 2025.

H.M. NYAGA

JUDGE

