

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
ELDORET

ELRC CAUSE NO. E081 OF 2024

(Before Hon. Lady Justice Maureen Onyango)

**KENYA UNION OF ROAD CONTRACTORS AND
CIVIL ENGINEERING WORKERS.....CLAIMANT**

VERSUS

**CHINA RAILWAY NO. 7
ENGINEERING GROUP.....RESPONDENT**

RULING

1. The Respondent herein filed an application by way of Chamber Summons dated 4th August 2025 seeking for orders that this Court stays the delivery of its judgment scheduled for 16th October 2025, sets aside the interlocutory judgment entered in default together with all consequential orders and grants the Respondent unconditional leave to defend the suit.
2. The application is premised on the grounds that counsel for the Respondent entered appearance on 26th November 2024 and

on 9th December 2024 uploaded the Statement of Response to the Claim onto the CTS (e-filing portal); that however, counsel inadvertently believed that the requisite filing fees had been paid, only to later discover that the payment had not gone through; that he was not notified that the matter was coming up for pre-trial on 25th February 2025, as no notice was issued or served upon him; that in the absence of the Respondent's counsel and a filed Statement of Response, the Court entered interlocutory judgment in favour of the Claimant, directed the Claimant to file submissions, and reserved judgment for delivery on 16th October 2025; that the Respondent has been condemned unheard in violation of the rules of natural justice; that the Respondent has a strong and arguable defence raising triable issues of both law and fact; that the inadvertent failure to pay filing fees should not be visited upon the Respondent and lastly, that the court should exercise its discretion, set aside the interlocutory judgment and all consequential orders, grant unconditional leave to defend the suit, and allow the matter to be determined on its merits.

3. The application is supported by an affidavit sworn on 4th August 2025 by the Respondent's counsel, wherein he reiterates and expounds on

the grounds upon which the application is founded.
4. The application is opposed. The Claimant filed a Replying Affidavit sworn on 6th October 2025 by its National General Secretary, Charles Osicho, contending that the application is incompetent, bad in law, and an abuse of the Court process.
5. The Claimant further avers that on 3rd December 2024, counsel for the Respondent was present in Court, sought a further mention date, and undertook to file a response to the Claim. It is contended that by 4th February 2025, the Respondent had failed to file its response citing technical challenges.
6. According to the Claimant, the Respondent's continued failure to file a response on the basis of difficulties in uploading documents onto the CTS portal is unjustified and unfair. On this basis, it is averred that the application is malicious and intended to frustrate the Claimant and its members by denying

them their constitutional rights under Article 41 of the Constitution.

7. The application was canvassed by way of written submissions. The Respondent filed its submissions dated 20th October 2025 while the Claimant's submissions are dated 30th October 2025.

Determination

8. The issue for determination by this Court is whether the orders sought by the Respondent should be granted.
9. The power of the Court to set aside a default or interlocutory judgment is discretionary and is intended to ensure that justice is done to the parties. This discretion must, however, be exercised judiciously and on sound principles.
10. The Respondent's explanation for failure to file a Statement of Response is that although the document was uploaded onto the CTS portal, counsel inadvertently believed that filing fees had been paid when in fact the payment did not go through. The Respondent further contends that it was not served with a pre-trial notice for 25th February 2025 and was therefore unaware of

the proceedings that culminated in the entry of interlocutory judgment.

11. On the other hand, the Claimant maintains that the Respondent was aware of the proceedings, had undertaken to file a response, and repeatedly failed to do so, allegedly citing technical challenges. According to the Claimant, the Respondent's conduct amounts to indolence and an abuse of the Court process.
12. From the Record, the Respondent entered appearance but failed to file its Statement of Response within the prescribed time. While the explanation offered by the Respondent demonstrates a degree of negligence on the part of counsel, the law is settled that mistakes of counsel though not to be encouraged, should not automatically be used to shut out a party from the seat of justice, particularly where no irreparable prejudice is occasioned to the opposing party.
13. This Court in exercise of its discretion is guided by the constitutional imperative under Article 50 of the Constitution, which guarantees every person the right to a fair hearing, and

by Article 159(2)(d), which enjoins courts to administer justice without undue regard to procedural technicalities. While procedural rules serve an important purpose in ensuring orderly conduct of litigation, they should not be applied in a manner that defeats substantive justice.

14. In the circumstances of this case, I am persuaded that the interests of justice would be better served by allowing the dispute to be determined on its merits rather than on the basis of a procedural default.
15. Consequently, the application dated 4th August 2025 is hereby allowed on the following terms: -
 - i. The interlocutory judgment entered in default together with all consequential orders is hereby set aside,
 - ii. The Respondent is granted unconditional leave to file and serve its Statement of Response within fourteen (14) days from the date hereof.
 - iii. The Claimant shall be at liberty to file any reply, if necessary, within fourteen (14) days of service.

- iv. The Respondent shall pay the Claimant throw away costs assessed by the court at Kshs. 20,000 before the next date of court appearance.
16. Mention date for pre-trial directions will be taken at the time of delivery of this ruling.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 22ND DAY OF DECEMBER, 2025**

**MAUREEN ONYANGO
JUDGE**