



**Perrot Enterprises Limited v Abdul (Civil Case E022 of 2021)
[2025] KEHC 19084 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19084 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL CASE E022 OF 2021
EN MAINA, J
DECEMBER 18, 2025**

BETWEEN

PERROT ENTERPRISES LIMITED PLAINTIFF

AND

NDARU BOGOYE ABDUL DEFENDANT

RULING

1. Before me for ruling is the Plaintiff's application dated 17th January 2022. The application is premised to be brought under Sections 3 and 3A of the [Civil Procedure Act](#) and Orders 7 Rule 1 and 51 Rule 1 of the Civil Procedure Rules.
2. The application seeks an order firstly, to strike out the Defendant's defence dated 22nd December 2021; and secondly for judgment to be entered for the Plaintiff.
3. The gravamen of the application as expressed in the grounds, the supporting affidavit and submissions of Counsel for the Plaintiff is that the defence was filed out of time without leave of the court, 71 days upon entry of appearance and after Plaintiff had filed a request for judgment. It is contended that the defence is incompetent and has in any event never been served upon Counsel for the Plaintiff.
4. The application was not opposed as no replying affidavit or other form of response was filed and even through Counsel for the Defendant was present when directions were given to canvass the application through written submissions he did not file any submissions.
5. Learned Counsel for the Plaintiff/Applicant submitted that Section 3A of the [Civil procedure Act](#) as read with Sections 1A and 1B of the Act place upon this court a duty to ensure timely disposal of proceedings at an affordable and just manner. Counsel also cited Order 7 Rule 1 of the Civil Procedure Rules which requires a defendant to file a defence within 14 days after entering a defence unless some other or further order be made by the court. Counsel submitted that the provisions of Order 7 Rule 1 are couched in mandatory terms; that the Defendant purported to file a defence 71 days from the



date of entry of judgment; that failure to explain why the defence was not filed within the stipulated period renders the defence incompetent and it ought to be struck out and expunged from the record. Further that the judgment must be entered for the Plaintiff as per request for judgment filed on 16th November 2021.

6. Drawing from the case of Purdy v Cambrian [1999] ALL ER 1518 Counsel asserted that delay is the enemy of justice and urged this court to give effect to the overriding objectives.
7. Counsel also placed reliance on the case of Nicholas Kiptoo Arap Salat v IEBC & 7 Others [2014] eKLR where the court dealt with the issue of filing pleadings out of time without leave. Counsel contended that there was no explanation for the delay hence the defence should be struck out and the costs of this application be awarded to the Plaintiff/Applicant.
8. I have carefully considered this application and before I go into its merit I wish to first deal with the issue of service since Counsel for the Defendant/Respondent kept saying he had not been served with the application and did not file submissions. I have perused the file carefully in order to confirm whether or not the application was indeed served. I came across two affidavits of service one sworn by Kennedy Odhiambo on 6th June 2022 indicating at paragraph 3 that he served a Mention Notice and another sworn by Winston Ngaira on 21st July 2025 to the effect that on 4th June 2025 he served a Mention Notice. None of the above two affidavits refer to service of the application and it is therefore more probable than not that the application was served. Be that as it may, in order to do justice to the parties and in order to save on judicial time, noting the age of this case, I have decided to determine this application based only on the material before this court, precedent and the law.
9. It is trite that striking out a pleading is a draconian exercise of discretion which out to be exercised sparingly. In the case of Nicholas Kiptoo Arap Salat v IEBC & 7 Others Civil Appeal No. 228 of 2013 Ouko JA observed:

“Deviations from and lapses in form and procedures which do not go to the jurisdiction of the Court, or to the root of the dispute or which do not at all occasion prejudice or miscarriage of justice to the opposite party ought not be elevated to the level of a criminal offence attracting such heavy punishment of the offending party, who may in many cases be innocent since the rules of procedure are complex and technical. Instead, in such instances the Court should rise to its highest calling to do justice by sparing the parties the draconian approach of striking out pleadings. It is globally established that where a procedural infraction causes no injustice by way of injurious prejudice to a person, such infraction should not have an invalidating effect. Justice must not be sacrificed on the altar of strict adherence to provisions of procedural law which at times create hardship and unfairness.”

10. It is indeed correct that in this case the statement of defence was filed hopelessly out of time and that there is nothing like a “defence under protest”. However, I have perused that defence and I am satisfied that the same raises triable issues which need to be considered on merit. I say so being conscious that a triable issue is not one that must necessarily succeed.
11. No prejudice will be suffered by the Plaintiff/Applicant as it will have a chance to adduce evidence to rebut the defence. The plaintiff shall also be compensated by an award of the costs of the application.
12. The upshot is that the application is dismissed. The statement of defence be and is hereby deemed as duly filed, but with a rider that the defendant/respondent shall pay to the plaintiff/applicant thrown away costs of the Kshs.50,000/-. The costs of the application shall be in the cause.

It is so ordered.



RULING DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 18TH DAY OF DECEMBER 2025.

E. N. MAINA

JUDGE

In The Presence Of:

Mr. Koech for Yano for Plaintiff

Mr. Mwangi for Respondent

Geoffrey – Court Assistant/Interpreter

