

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

COMMERCIAL SUIT NO.E003 OF 2025

JIN LE ENTERPRISES CO LTD.....APPLICANT

VERSUS

CHINA STATE CONSTRUCTION

ENGINEERING CORPORATION (K) LTD.....

RESPONDENT

RULING

1. The plaintiff/applicant has moved this court vide a Notice of Motion dated 23/6/2025 for the following prayers;

(i) That the defendant/respondent's written statement of defence dated 3/6/25 be struck out and summary judgment be entered against the defendant/respondent for the sum of Kshs.24,357,646.80 together with costs of the suit and interests at court rates from date of filing suit till payment is made in full.

(ii) Costs of this application.

2. The grounds raised are listed as follows;

- (a) *That Kshs.24,357,646.80 is due and owing from the defendant/respondent to the plaintiff/applicant on account of services rendered by the plaintiff during the upgrading of Kitale-Endebess-Suam Road project which the defendant was undertaking.*
- (b) *That the defendant in his statement of defence filed has not raised any triable issue or refuted the plaintiff's claim.*
- (c) *That the defence filed is a sham, a bare denial and intended to prejudice and delay fair trial of the suit.*
- (d) *That the defendant/respondent is truly and justly indebted to the plaintiff and the plaintiff is entitled to realize his entitlement as expeditiously as possible.*
- (e) *That it is in the interest of justice to allow this application.*

3. The applicant through LIU WEIYING has sworn an affidavit dated 23/6/25 in support of this application and in that affidavit, the deponent reiterates the above grounds.

4. He has exhibited his statement together with bundle of documents in support of the plaintiff's claim.

5. He avers that demands were made to the defendant/respondent to make good the payment and notice to sue issued.

6. He further avers that the defendant is truly indebted to the defendant and the defence filed is a sham.

7. In its written submissions done through learned counsel M.K Onsongo & Co Advocates dated 5/10/25, the applicant submits that the claim against the defendant/respondent consists of principal sum of Kshs.7,599,513.42 plus accrued interests of Kshs.16,758,133.42.
8. The applicant further submits that the defendant admits being indebted to the plaintiff and that it only seeks to justify failure to settle the amount by reason that its employee Kenya National Highway Authority has not paid them.
9. The applicant invokes the provision of Order 2 Rule 15(1) Civil Procedure Rules in its prayers and cites the decision in **SURJIT Singh & Anor -vs- Miwani Sugar Co (1989) Ltd (2000)KEHC 83 (KLR)** where the court entered summary judgment in case where the defendant's defence contained mere denials. The applicant contends that in this instance the defendant does not dispute the plaintiff's claim.
10. The applicant further contends that there is no clause in the contract between them that suggests that payment was to be conditional to the defendant being paid by its employer (Kenya National Highway Authority (KENHA)). The applicant submits that reliance upon none existent clause is misconceived, misleading and contrary to the express terms of written contract.
- 11.** According to the applicant there is no triable issue disclosed in the defence. It relies on the decision in **Sueng**

Enterprises Limited -vs- Uchumi Supermarkets Limited (2016) KEHC 8649 KLR.

12. It submits that the plaintiff's claim is a liquidated contractual debt supported by written agreement and that the defendant has not disputed the existence of the contract, the rental amount and the accrued interests. That the contract is clear and unconditional. He relies on **DB Schenker Limited -vs- Mara EP2 Ltd (Commercial Case E668 of 2021 (2022) KEHC 11330 (KLR)** Commercial and Tax where the court struck out a defence because there was no question whatsoever or any issue raised about the services rendered and outstanding sum due.
13. It contends that even if KENHA was to fail to pay that default does not extinguish or suspend the defendant's contractual obligation to the plaintiff.
14. The respondent has opposed this application through an affidavit sworn on 8/10/25 by GAO HAUJIE, a manager with the defendant. He avers that the defendant is a reputable company with ongoing road projects in Kenya and that its headquarters is situated at Gatundu Close, Kileleshwa Nairobi. That the plaintiff's allegations of imminent departure from jurisdiction of this court is false and misleading.
15. He avers that the principal sum pleaded by the applicant is Kshs.16,768,133 and that in the application

herein it seeks Kshs.24,357,646.80 without showing how the computation was done.

16. He further contends that seeking judgment on what is not pleaded is irregular and offends the principle that parties are bound by their pleadings. That the plaintiff has inflated figures rendering the application speculative, unreliable and incapable of supporting summary judgment.
17. According to the defendant, it deserves an opportunity to be heard to answer allegations of breach of contract and that it has raised a reasonable defence.
18. It is the respondent's case that the applicant is seeking interest under the contract which in its view offends the doctrine of unjust enrichment.
19. It avers that it has bona fide defence including issues relating to contractual performance, project scope and payment milestones which matters in its view can be resolved through evidence and cross-examination.
20. It further avers that it would suffer great prejudice if it is condemned unheard.
21. In its written submissions dated 23/10/25 through learned counsel Wangari Wanjiru Advocate, the respondent submits that the application before court is defective because it offends the provisions of Order 2 Rule 15(1) (a). According to the respondent while the cited rule stipulates that no evidence shall be adduced, the application has a

total of 3 annexures instead of only stating concisely the grounds upon which it is made.

22. It further points out that under Order 36 Rule 1 Civil Procedure Rules invoked by the applicant, the provision provides that summary judgment is to be entered specifically where a defendant enters appearance and fails to file a defence. It is the respondent's case that it duly filed a defence dated 3/6/25.

23. The respondent therefore attacks the plaintiff's application in two points one is that under the limb of striking out the defence, the prayer is defective for adducing evidence and on the 2nd limb of summary judgment, it contends that the prayer is defective because there is a defence filed and therefore a prayer for summary judgment is not available in its view. To that extend the respondent submits that the application is incurably defective and relies on the decision **of Pyaral Mhand Bheru Rajput -vs- Barclays Bank of Kenya (Nbi HCC No.38 of 2004)**.

24. It submits that the discretionary power granted to this court under Order 2 Rule 15 Civil Procedure Rules should be exercised sparingly and that where there is a bona fide triable issue a defendant should be given a chance to defend the suit. In that regard it relies on **Postal Corporation of Kenya -vs-Inamdar & 2 Others (2004)eKLR and Kilach -vs- Nation Media Group Ltd Slaba Agencies Ltd & Michael Rono (2015)eKLR**.

25. The respondent takes the view that the defence filed herein raises triable issue which relates to frustrations resulting in delay of performance. It blames its employer for default to perform its obligations and contends that the applicant is well aware of this fact stating that it has shared correspondences to that effect with the applicant.
26. The respondent avers that the plaintiff's claim lacks specificity and that the same warrants trial. It points out that the issue of interests require clarifications because each party in its view has different view on interests accruing from the amount owed.
27. It contends that it would be unfair to enter summary judgment without giving the respondent a chance to cross-examine.
28. It further contends that the applicant repossessed a motor vehicle in 2022 and that it has been having it for more than 3 years.
29. The respondent further pleads that the applicant's claim on interests accrued raises an issue of unjust enrichment because the interests charged exceed the principal sum thereby contravening the ***in duplum rule***.
30. The respondent reads bad faith in the application which was brought under certificate of urgency with a claim that it was in the process of winding up operations in Kenya. The respondent submits that no evidence has been adduced to prove that allegation. The respondent reads malice in the

allegation and contends that the same was aimed at frustrating entry of summary judgment.

31. The respondent submits that the applicant has come to this court with unclean hands and does not deserve the discretionary orders sought in this application.

32. This court has set out the summary of the applicant's case as well as the respondent's case. The application before me is seeking judgment against the defendant through a summary procedure. The applicant has invoked the provisions of Sections 1A, 13 and 3A of the Civil Procedure Act and Order 2 Rule 15(1) and Order 36 Rule 1 of the Civil Procedure Rules. The substantive provisions invoked however are Order 2 Rule 15 and Order 26 Rule 1. This is because the applicant asks this court to grant it judgment through a summary procedure.

33. Summary procedure is usually used for resolution of disputes that are clear and with undisputed facts. The aim or objective is to discourage parties from using court process to impede or delay access to justice and give court tools to facilitate just, expeditious or speedy resolution of disputes. Order 2 Rule 15(1) provides as follows;

(1) "At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that

—
(a) it discloses no reasonable cause of action or defence in law; or

(b)it is scandalous, frivolous or vexatious; or

(c)it may prejudice, embarrass or delay the fair trial of the action; or

(d)it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

Sub Rule 2 which has been heavily relied by the respondent provides that no evidence shall be admissible on an application made under Sub 1(a). An applicant is required to only state concisely the grounds upon which the prayer is made. What escapes many litigants and legal minds alike is that while an applicant under prayer 1(a) is required not to adduce evidence because the same is inadmissible any way, the applicant is at liberty to adduce evidence with respect to prayers hinged on any of the prayers under 1(b), (c) or (d). A party is therefore at liberty to move a court to strike out pleadings on any of the grounds cited above and adduce evidence or facts to support the prayers.

34. The applicant has also invoked the provisions of Order 36 Rule 1 which provides for summary procedure. it provides as follows;

(1) “In all suits where a plaintiff seeks judgment for—

(a)a liquidated demand with or without interest; or

(b)the recovery of land, with or without a claim for rent or mesne profits, by a

landlord from a tenant whose term has expired or been determined by notice to quit or been forfeited for non-payment of rent or for breach of covenant, or against persons claiming under such tenant or against a trespasser, where the defendant has appeared but not filed a defence the plaintiff may apply for judgment for the amount claimed, or part thereof, and interest, or for recovery of the land and rent or mesne profits”.

35. The objective of the provision is intended to provide a quick relief to litigants with liquidated to which no defence or good defence is preferred. This is meant to avoid unnecessary trial particularly where the claim is not denied or disputed. However where a defence discloses a triable issue, then summary procedure cannot apply. In the case of **Abok Odera T/A A.J Odera & Associates -vs- John Patrick Machira T/A Machira & Co Advocates (2013) KECA 208 (KLR)**, the court of Appeal gave guidelines on parameters within which a summary judgment can be granted while referencing the case of **Osodo -vs- Barclays Bank of Kenya International Limited (1981) KLR 30** where it was held that;

“Where there are triable issues raised in an application for summary judgment, there is no room for discretion and the court must grant leave to defend unconditionally”.

The court went further to reference the decision in **Nairobi Golf Hotels (Kenya) Limited -vs- Lalji Bhimji Sangami**

Builders and Contractors (1997) KECA 165 (KLR) where the same court noted the following;

“.....it is now trite that in an application for summary judgment under Order XXVRI of the Civil Procedure Rules, the duty is cast on the defendant to demonstrate that he should have leave to defend the suit. His duty is however limited to showing prima facie the existence of bona fide triable issue or that he has an arguable case. On the other hand it follows that a plaintiff is able to show that a defence raised by a defendant in an action within the provision of Order XXXV is shallow or a sham is entitled to summary judgment.”

36. Having set out the law and the case law above let me now evaluate or examine the facts obtaining in this case.

37. The plaintiff/applicant vide a plaint dated 30/4/2025 herein, claims a principal sum of Kshs.7,599,513.42 as rent arrears for leased property together with what it terms contractual interests of Kshs.16,758,133.42/- and thereafter at the rate of 14% per annum till payment in full. The plaintiff's claim as per the plaint arose from a lease agreement for hire of plaintiff's machinery used for upgrading of Kitale-Endebess-Suam Road project which was being undertaken by the defendant.

38. The defendant/respondent in paragraph 5 of the filed defence dated 3/6/2025 pleads as follows;

“The defendant reiterates to the contents of paragraph 6,7,8 in so far as admitting the contents of the demand. The defendant

further confirms the shortage of funds experienced and explained to the plaintiff's representative upon service of the letter in the headquarters offices. The attributes (sic) this shortage of funds to the employer, Kenya National Highways Authority for failure to pay to the defendant the sum of Kshs.297,010,140.26 accumulated as at 21/11/2024."

39. In paragraph 9, the defendant pleads as follows;

"The defendant admits the contends of paragraph 9 only in so far as admitting the contents of the plaint but wishes to reiterate that the defendant has experienced and continues to experience shortage of funds on the project as a result of failure by employer, Kenya National Highways Authority (KENHA)....."

40. The plaintiff/applicant in paragraph 8 shows the computation of the claim of Kshs.16,758.133.42 and in paragraph 7 it claims that demand was made to the defendant for that outstanding amount but the defendant failed and/or ignored hence the filing of this suit.

41. The question cropping up flowing from the above is whether the defence filed by defendant/respondent amounts to admission whether partial or full admission of being indebted to the plaintiff/applicant. To answer that question, this court is well guided by Court of Appeal in **ABOK JAMES ODERA (supra) which referenced a decision of CHOITRUM -VS- NAZARI (1984)KLR** that laid out the parameters of what does and does not amount to admission. It stated;

“.....in summary, an admission must be premised on the provisions of Order XII Rule Civil Procedure Rules (Now Order 13 Rule 2 Civil Procedure Rules), that the pleadings prescribed by a party against whom the relief is sought must be those that do not contain specific denials and no definite refusal to admit allegations; demonstrations that there are allegations of facts made by one party and not traversed by the other are deemed to be admitted; demonstration that there has been implied admission of facts inferred from pleadings in instances where the defendant has specifically failed to deal with allegations of fact in the plaint, the truth of which he does not admit or instances where a defendant has evasively denied an allegation in plaint.....”.

42. This court finds that from the pleadings filed in this matter the defendant expressly admits being indebted to the tune of Kshs.16,758,133.42. To that extend this court finds no bona fide issue to be tried other than just allowing the respondent to simply buy time to get paid by its employers (KENHA) as it claims. This court finds from the documents filed that the payment of debt was not conditional to any obligation by any 3rd party. In any event if the respondent had any claim against a 3rd party (read KENHA) then nothing could have stopped it suing it independently or as a 3rd party in this case.

43. The respondent contends that this application is incompetent for invoking the provisions of Order 2 Rule

15(1) Civil Procedure Rules and attaching three annexures to support the claim but as I have observed above the limitation of relying on evidence only relates to application made under Order 2 Rule 15(1) (a) only but under 1(b), (c) and (d) an applicant is at liberty to adduce evidence and demonstrate that defence filed is either frivolous or only intended at delaying a fair trial. This court finds that to the extent that the applicant has invoked all rules under Order 15(1) Civil Procedure Rules, the evidence exhibited is admissible. The plaintiff's claim against the defendant is well supported by documents.

44. This court further finds that in so far as the defendant has admitted the principal amount of Kshs.16,758,133.42/-, there is no defence filed and what the defendant has filed is just a sham. The applicant is therefore entitled to summary judgment because there is nothing to be tried. The defence has not disclosed any triable issue save on the question of interest. The relief under Order 36 Rule 1 is available against a party whose defence discloses no bona fide triable issue like in the present case save for the overriding objective of Civil Procedure Act (Section 1A) of interests.

45. The defendant has raised a legitimate issue regarding interest payable. It has submitted that the plaintiff has not pleaded the actual amount of interests which I find legitimate because in the plaint, it has claimed a total of Kshs.16,758,133.42/- as at 30/4/25 and states that from then

on the stated amount would attract interest at 14% per annum till payment is made in full. However in this application it has claimed a cumulative amount of Kshs.24,357,646.80 which amount is not specifically in tandem with the amount in the plaint though it indirectly refers to same as further interests.

46. In the premises, this court finds that this application partly succeeds to the extent that a summary judgment is entered against the defendant as admitted for Kshs.16,758,133.42 plus costs and interests at court rates. The defendant's defence to that extent is struck out. The issue of interests at 14% being contested shall either be agreed upon by the parties or be fixed for trial. Costs of this application to be paid by the respondent.

DELIVERED, DATED and SIGNED at KITALE this21st day ofJANUARY....., 2026.

HON JUSTICE R.K. LIMO
KITALE HIGH COURT