

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CIVIL APPEAL NO. E145 OF 2025

PRIDE DRIVE LIMITED.....APPELLANT/APPLICANT

VERSUS

HANNAH GATHONI KAGWI.....RESPONDENT

(Appeal from the Ruling dated 15/07/2024 delivered in Eldoret Small Claims Commercial Court Case No. E1222 of 2023 by Hon. R. Otieno - RM)

JUDGMENT

1. This Appeal arises from the Ruling referred to above, delivered on 15/07/2024 in the said Small Claims Court Court suit, in which the Appellant was sued by the Respondent (Claimant). It is not in dispute that *ex parte* default Judgment was entered therein against the Appellant on 26/03/2024 for the sum of Kshs 117,630/- when the Appellant failed to file a Statement of Response, or attend any Court session. By the impugned Ruling, the Small Claims Court declined to set aside the default Judgment thus prompting the filing of this Appeal.
2. The Respondent's claim, as captured in her Statement of Claim dated 15/12/2023, filed through **Messrs Chrisy Mwenda Otieno & Co. Advocates**, was for repair charges and related costs amounting to Kshs 117,630/-, arising from damage caused to her motor vehicle as a result of a road accident that occurred on 22/12/2020 along the Nakuru-Eldoret Road, allegedly caused by the Appellant's motor vehicle.
3. The Appellant, through **Messrs Morara Apiemi & Nyangito Advocates**, then filed the Application dated 19/12/2024 seeking setting aside of the default Judgment and leave to defend the suit, which Application was however dismissed on 11/07/2025. That Application and Ruling are now the subject of this Appeal.
4. The Application for setting aside was supported by the Affidavit sworn by one **Laura Achieng**, who described herself as the Appellant's Legal Manager. She acknowledged being served with Statement of Claim and other pleadings filed in the suit but averred that upon

service, she forwarded the same to the Appellant's insurer, **Messrs First Assurance Co. Ltd** to appoint an Advocate to defend the matter in accordance with terms of the insurance policy. She deponed that she honestly believed that the insurer dealt with the matter but was, on 2/12/2024, served with a Proclamation and upon inquiry, the insurer indicated that it did not act on the matter for the reason that the subject motor vehicle was not insured by it but that there was an inadvertent omission to communicate that position to the Appellant. She claimed that it is at this point that she also realized that the motor vehicle did not even belong to the Appellant, and had therefore mistakenly believed that it was insured by the said insurer. She thus contended that the failure to file a Response or attend Court sessions was not wilful or intentional. She also urged that the Appellant has a good defence to the claim and exhibited a draft Statement of Response.

5. In opposing the Application, the Respondent (Claimant) filed the Replying Affidavit which she swore on 20/02/2025. She deponed that the Statement of Claim and other pleadings were served upon the Appellant on 19/02/2024, and a Mention Notice was also served upon the Appellant on 31/01/2024 notifying the Appellant that the suit was scheduled to come up in Court on 6/02/2024. He stated that despite such service, the matter proceeded with no appearance by the Appellant, and the Court, satisfied with service, then entered the ex parte default Judgment. She urged that the Appellant's failure to participate in the suit was deliberate and inexcusable, that equity aids the vigilant, not the indolent, and that the Appellant had neither furnished evidence to demonstrate that the pleadings were forwarded to the insurer, **First Assurance Co. Ltd**, as alleged or that the insurer communicated that it did not act on the matter for the reason that the motor vehicle the subject of the suit was not insured by it. She also deponed that the Police Abstract on record indicates that the motor vehicle belongs to the Appellant, which Abstract, together with the Investigations Report, was duly served upon the Appellant.
6. As aforesaid, by the Ruling delivered on 11/07/2025, the Adjudicator dismissed the Application. Aggrieved by the decision, the Appellant filed this Appeal and listed 3 grounds of Appeal as follows:
 - i) **THAT the learned Magistrate erred in law by failing to appreciate that the Appellant's draft Response to the claim raises highly triable issues that ought to**

be determined at a full trial thereby denying the Appellant an opportunity to be heard which decision is untenable and manifestly unjust.

ii) THAT the learned Magistrate erred in law by disregarding the rules of natural justice as well as the constitutional requirements that every litigant must be afforded a fair hearing which decision is untenable and manifestly unjust.

iii) THAT the Appellant shall upon receipt of the typed proceedings, file a supplementary Memorandum of Appeal to include other grounds and reasons to be adduced at the hearing hereof.

7. The Appeal was then canvassed by way of written Submissions and the Appellant's Submissions is dated 18/12/2025. In the Submissions, Counsel for the Appellant basically reiterated the matters already set out in the Supporting Affidavit and cited several authorities. I do not therefore deem it necessary to recount the Submissions.

8. For the Respondent however, I have not come across any Submissions filed for, or on her behalf, either in the physical file or in the online Judiciary Case Tracking System (CTS) portal.

Determination

9. The issue for determination herein is **“whether the Small Claims Court erred in declining to set aside the *ex parte* default Judgment entered against the Appellant.”**

10. On the issue of matters that are appealable from the decisions of the Small Claims Court, **Section 38(1) and (2) of the Small Claims Court Act No. 2 of 2016** are premised as follows:

38. Appeals

(1) A person aggrieved by the decision or an order Appeals. of the Court may appeal against that decision or order to the High Court on matters of law.

(2) An appeal from any decision or order referred to in subsection (1) shall be final.

11. What the above means is basically that under **Section 38**, the High Court, while handling an appeal from the **Small Claims Court** is not permitted to substitute that Court's decision with its own conclusions based on its own analysis and appreciation of the facts, unless perhaps where the findings are so perverse that no reasonable tribunal would have arrived at them.

12. On the powers of the Small Claims Court to enter default Judgement, **Section 26** of the **Small Claims Court Act** provides as follows:

27. Default judgment

(1) If the respondent fails to respond to the claim within the prescribed period, the Court may, either on its own motion or on the claimant's application enter judgment for the claimant and order the relief sought in the statement of claim.

(2) If a respondent fails to appear at the hearing in person or by a representative, the claimant may apply to the Court for an order to be made against the respondent.

(3) Upon application made by the claimant under subsection (2), the Court shall grant the claimant the order if it is satisfied that the claimant is entitled thereto.

(4) An order shall not be made against a respondent under this section unless the Court is satisfied that a copy of the written claim and the notice of hearing have been served on the respondent under section 25 of this Act.

13. In an Appeal challenging exercise of discretion as herein, the limits within which an Appellate Court can interfere were reiterated by the Supreme Court in the case of **Musa Cherutich Sirma v Independent Electoral and Boundaries Commission & 2 others** [2019] eKLR, as follows:

“..... we affirm that we would only interfere with the Appellate Court's exercise of discretion if we reach the conclusion that in exercise of such discretion, the Appellate Court acted arbitrary or capriciously or ignored relevant facts or completely disregarded the principles of the governing law leading to an unjust

order. Conversely, if we find that the discretion has been exercised reasonably and judiciously, then the fact that we would have arrived at a different conclusion than the Court of Appeal is not a reason to interfere with the Court’s exercise of discretion.”

14. Back to this matter, it is trite procedure that a Defendant, once served with Summons or the Statement of Claim in this case, is expected to act promptly and expeditiously in entering appearance, where required, and subsequently filing defence or in this case, an answer to the claim. The time limit provided under **Section 26** of the **Small Claims Court Act** for filing a Response is 15 days from the date of service of the Statement of Claim. In the event a Defendant fails to meet the set timelines and a default judgment is entered, then he will be under a legal duty, should he wish to seek setting aside of the Judgment, to sufficiently explain the reasons why he delayed to act.

15. The Court of Appeal, in the case of **Gicharu Kimani & Associates Advocates –vs- Samwel Kazungu Kambi [2020] eKLR**, in restating the difference between a default Judgment regularly entered and one, which has been obtained irregularly, and the different effects flowing therefrom, held as follows:

“Considering the circumstances of this motion, the facts regarding the merits or demerits of it one must take into account in exercise of discretion that it’s within the ambit of the guiding principles laid down in the case of James Kanyiita Nderitu & Another v Marios Philotas Ghikas & Another Civil Appeal No 6 of 2015 eKLR (Msa), the Court of Appeal stated as follows:

“We shall first address the ground of appeal that faults the learned judge for setting aside the default Judgment and consequential orders in the circumstances of the case. From the outset, it cannot be gainsaid that a distinction has always existed between a default Judgment that is regularly entered and one, which is irregularly entered. In a regular default Judgment, the Defendant will have been duly served with summons to enter appearance, but for one reason or another, he had failed to enter appearance or to file defence, resulting in default Judgment. Such a Defendant is entitled, under Order 10 rule 11 of the Civil Procedure Rules, to move the Court to set aside the default Judgment and to grant him leave to defend the suit. In such a scenario, the Court has unfettered discretion in

determining whether or not to set aside the default Judgment, and will take into account such factors as the reason for the failure of the Defendant to file his memorandum of appearance or defence, as the case may be; the length of time that has elapsed since the default Judgment was entered; whether the intended defence raises triable issues; the respective prejudice each party is likely to suffer; whether on the whole it is in the interest to set aside the default Judgment, among other. (See Mbogo & Another v Shah (supra), Patel v EA Cargo Handling Services Ltd {1975} EA 75, Chemwolo & Another v Kubende {1986/KLR 492 and CMC Holdings v Nzioki {2004/1 KLR 173})'.

16. In this case, there is no dispute that the default Judgment was a regular one. I say so because the Appellant admits that indeed, it was served with the Statement of Claim and other pleadings, which service, according to the Respondent, was effected on 19/02/2024, and earlier, with a Mention Notice on 31/01/2024. Judgment was then eventually entered about 1 month later on 26/03/2024. Even where the Judgment is regular as herein, the Court still retains the power to set it aside if justice of the case demands, for instance, where the Defendant demonstrates that it has a good defence, and where prejudice caused may be compensated by an award of costs. This is what the Court of Appeal affirmed in the case of **Tree Shade Motors Limited v D T Dobie and Company (K) Ltd and Another [1998] eKLR**).
17. In this case, the argument advanced by the Appellant' Legal Manager is that upon being served, she, in accordance with the terms of the insurance policy, forwarded the documents to the Appellant's insurer to handle the matter and to appoint Advocates to represent the Appellant. She then claims that the insurer declined to take up the matter upon realization that the subject motor vehicle was not insured by it but that the insurer delayed to communicate this information to the Appellant. She claims further that it is upon receiving the communication from the insurer that she then realized that the Appellant did not even own the vehicle.
18. The Appellant has however not exhibited anything to substantiate the above allegations. Since the Appellant's Legal Manager has not alleged that her communication with the insurer was entirely verbal, I believe that she must have engaged in some written communication with the insurer. She must have forwarded the documents through an email or a formal letter.

Similarly, the insurer's declining to take up the matter must have been communicated to the Appellant in writing. She does not even disclose or reveal the dates when she allegedly forwarded the documents to the insurer, or the date when the insurer responded or communicated back, and in what manner. I do not believe that there was absolutely nothing written in all this communication which the Appellant could not exhibit. Failure to produce such communication therefore raises serious doubts over the truth or credibility of the Appellant's claims.

19. The Appellant's Legal Manager also claims that after the insurer notified her that the subject motor vehicle was not insured by it, she "checked" and realized that the Appellant did not even own the vehicle in the first place, and that she had therefore forwarded the Court documents to the insurer in error. She does not however explain how she just "suddenly" came to this realization, and why it was not possible to have made this realization earlier. The Police Abstract, and the Motor Vehicle Copy of Records (Search) from the National Transport Safety Authority (NTSA) on record, both bear the name of the Appellant as the owner of the motor vehicle, registration number **KCS 671R**, and so does the Investigations Report. Since this denial of ownership of the vehicle is basically the only defence raised in the Appellant's draft Statement of Response to demonstrate that it has a strong defence, the Appellant ought to have given an explanation on how its name ended up appearing as the registered owner of the vehicle if at all it did not own it. Without any such explanation, this denial of ownership sounds far-fetched and seriously weakens the contention of the existence of a strong defence.

20. It is also not lost on me that while the Appellant was admittedly served with the Statement of Claim in January or February 2024, and the default entered in March 2024, it was not until December 2024, a whole 9 months' later, that the Appellant eventually applied for setting aside the default Judgment. Does it mean that even after the insurer declined to take up the case, the Appellant still never bothered to find out the status of the suit? If this is not outright lethargy then it is definitely a case of inexcusable inordinate delay which has not at all been explained.

21. Under the above circumstances, considering the totality of the matter as a whole, I am not satisfied that that the Appellant has demonstrated that the Adjudicator, in exercising his

discretion, acted arbitrary or capriciously, or ignored relevant facts, or disregarded the applicable principles.

22. In reaching the above verdict, I am also guided by the fact that the nature of the Small Claims Court is such that it is intended to ensure that “*small claims*” are dealt with efficiently without the burden of strict rules and at a minimum cost to the parties. In making Rules of that Court, the Chief Justice is to be guided by the **Section 3** thereof which provides as follows:

“Section 3 - Guiding principles

(1) In exercise of its jurisdiction under this Act, the Court shall be guided by the principles of judicial authority prescribed under Article 159(2) of the Constitution.

(2)

(3) Without prejudice to the generality of subsection

(1) the Court shall adopt such procedures as the Court deems appropriate to ensure—

(a) the timely disposal of all proceedings before the Court using the least expensive method;

.....;

(d) simplicity of procedure.”

23. Regarding the spirit of “*timely disposal*”, of cases filed at the Small Claims Court, **Section 34** then provides that:

“34. Expeditious disposal of cases

“(1) All proceedings before the Court on any particular day so far as is practicable shall be heard and determined on the same day or on a day to day basis until final determination of the matter which shall be within sixty days from the date of filing the claim. [Emphasis mine]

24. It must therefore be always recalled that proceedings before the Small Claims Court are expected to adhere to the principle of “*timely disposal*”, use of the “*least expensive method*” and “*simplicity of procedure*”. Sight should therefore never be lost of the spirit, aspirations, intentions and purpose of the **Small Claims Court Act**. The Act was enacted to address a genuine concern and it is the duty of the Courts to ensure that focus is not lost on such concern and that the mischief that the Act sought to cure remains within sight. This is evidently also one of the reasons why an Appeal from the Small Claims Court to the High Court is final. The Appellant having therefore failed to show good cause why it failed to defend the suit within the stipulate timelines, the spirit of “*timely disposal*” of cases filed before the Small Claims Court must prevail. Accordingly, I find no reason to elongate this litigation any further.

Final Orders

25. The upshot of my findings above is that this Appeal fails, and is accordingly dismissed. As costs follow the event, the Respondent is awarded costs.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 30TH DAY OF JANUARY 2026

.....
WANANDA JOHN R. ANURO
JUDGE

Delivered in the presence of:

Ms. Odira for the Appellant

N/A for the Respondent

Court Assistant: Brian Kimathi