



Lee Construction Ltd v Grob Aircraft Co. Ltd & another (Civil Case E034 of 2024) [2026] KEHC 1506 (KLR) (Civ) (12 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL CASE E034 OF 2024**

**JN MULWA, J
FEBRUARY 12, 2026**

BETWEEN

LEE CONSTRUCTION LTD PLAINTIFF

AND

GROB AIRCRAFT CO. LTD 1ST RESPONDENT

GROB AIRCRAFT SE 2ND RESPONDENT

RULING

1. For determination is Lee Construction Ltd (hereafter the Plaintiff/Applicant) motion dated 18/02/2025 pursuant to Order 36 Rule 1 of the Civil Procedure Rules (CPR) seeking as against Grob Aircraft Co. Ltd and Grob Aircraft Se (hereafter the 1st & 2nd Defendants/Respondents) the following orders;-
 - a) That this Honorable Court be pleased to enter summary judgment in favour of the Plaintiff as prayed in the plaint
 - b) That the costs of the application be provided for.
2. The motion is premised on grounds found at the supporting affidavit sworn by t Lee K. Nyachae, on even date, who cites being a Director of the Plaintiff duly conversant with the matter and authorized by the Applicant’s Board of Directors to depose the affidavit. The gist of his deposition is that on 23/09/2020, and subsequent instructions to commence work on 15/10/2020, the parties hereto entered into a contract for the construction of the Grob Hangar and Associated Civil Works at the Laikipia Airbase. That the Plaintiff proceeded to fulfil the obligations as per the agreement and as contractually agreed, to completion, however despite demand for payment of an outstanding sum of



€328,508, the Defendants have refused to settle the said sum. He concludes by stating that Defendants entered appearance in the matter on 16/03/2024 but have to date failed to file a defence.

3. The Defendants offered no response to the instant motion despite being afforded ample opportunity to do so.
4. That said, on 12/06/2025, parties hereto took directions before this Court on disposal of the Plaintiff's motion by way of written submission, in the event no settlement in respect of the dispute was arrived at. No settlement having been arrived at, the respective parties duly complied with directions on filing of submissions.
5. However, before proceedings to address the crux of the Plaintiff's motion, I wish to set out in brief, the history of the matter, in light of the Defendants submissions and Plaintiff's further submissions as can be gleaned from the record.
6. At the outset the Plaintiff moved this Court vide a plaint dated 22/02/2024 and motion of even dated pursuant to Order 39 Rule 1 of the CPR seeking inter alia-;

“ a.

b. That the Honorable Court be pleased to direct that the 1st & 2nd Defendants and or their lawful directors to Show Cause within fourteen (14) days why they should not furnish security in the sum of €328,508.40 or such other sum as the honorable Court shall deem sufficient.

c. That pending the appearance of the 1st & 2nd Defendants as per prayer (b) herein and or hearing and determination of the application, this Honorable Court do direct Hiebeler Rochus Andre to deposit his travel passport before this Honorable Court.

d. That pending the appearance of the 1st & 2nd Defendants prayer (b) herein and or hearing and determination of the application the Honorable Court be pleased to issue an order of attachment of aircraft of registration and description KAF721, Grob G 120TP, Serial No. 11119 with an estimate value of €3,800,000.

e. That pending the hearing and determination of the suit, this Honorable Court be pleased to issue an order of attachment of aircraft of registration and description KAF721, Grob G 120TP, Serial No. 11119 with an estimated value of €3,800,000.

f. That the Honorable Court be pleased to issue any further orders/directions as it deems fit, necessary, expeditious and in the interest of justice.

g.”

7. When the latter application came up for inter partes hearing on 07/03/2024, Ongeri, J. having noted despite service of the application upon the Defendants, the same was unopposed. As a consequence, she proceeded to grant the Plaintiff, prayers (b) and (c), as set out above.
8. Subsequently, on 12/02/2025, when the matter came up before me, upon considering oral submissions by counsel for the Plaintiff that prayers (b) and (c) were yet to be complied with, I proceeded to grant prayer (e) “but limited not to sale, lease or in anyway disposal of the aircraft pending the hearing and



determination of the Applicant's suit". It warrants mentioning that on the latter date, the said orders were issued in the presence of both counsel for the Plaintiff and Defendants on 20/11/2024.

9. Penultimately, when parties appeared before me on 12/06/2025, counsel for the Plaintiff informed the Court that he had since filed the present motion that is presently for consideration. And it is on the premise of the aforesaid that I issued directions that the Defendants file a response within fourteen (14) days thereafter parties dispose of the motion by way of written submissions.
10. Why do I digress on the above? A cursory perusal of the record, it can be noted that the Defendants filed a replying affidavit and submissions with respect to the motion dated 22/02/2024. This notwithstanding the fact that the gist of the latter motion had since been dealt with, as a consequence of the orders issued by Onger, J. on 07/03/2024 and myself on 12/02/2025 as earlier, set out in this ruling.
11. As is, for all intents and purposes what is presently for determination, as rightly posited in the Plaintiff's further written submissions, is the motion dated 18/02/2025.
12. Having set out the above having considered the record before me alongside the Plaintiff's submissions, the Court postulates that the issues presenting for determination concern -:
 - a. Whether the Honorable Court ought to enter summary judgment in favour of the Plaintiff as prayed in the plaint?
 - b. Who ought to bear the costs of the motion?

Whether the Honorable Court ought to enter summary judgment in favour of the Plaintiff as prayed in the plaint?

13. It is trite that the grant or refusal to enter summary judgment entails the exercise of discretion by the Court. Order 36 Rule 1 of the CPR provides that-;

- “(1) In all suits where a plaintiff seeks judgment for—
 - (a) a liquidated demand with or without interest; or
 - (b)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.
- (2) The application shall be supported by an affidavit either of the plaintiff or of some other person who can swear positively to the facts verifying the cause of action and any amount claimed.
- (3) Sufficient notice of the application shall be given to the defendant which notice shall in no case be less than seven days.”

14. Meanwhile, Order 36 Rule 2 of the CPR states that-;

“The defendant may show either by affidavit, or by oral evidence, or otherwise that he should have leave to defend the suit.”



15. Whereas Rule 4 of the same Order provides-;
- “If a defendant is granted leave to defend he shall file his defence within fourteen days of the grant of leave unless the court otherwise orders.”
16. And lastly, Rule 7 of Order 36 states that-;
- Leave to defend may be given unconditionally, or subject to such terms as to giving security or time of trial or otherwise, as the court thinks fit.
17. The events leading up to filing of the present suit have in part been captured earlier in this ruling. Nevertheless, what the Court garners to be the gist of the suit is that the Plaintiff had been contracted to by the Defendants to construct the Grob Hangar and Associated Civil Works at the Laikipia Airbase. Upon completion, handing over the project and demand being made in sum of €328,508, to the Defendants, being the amount owing on completion of the project, the latter have failed, refused and or neglected to pay the sum due and owing.
18. Therefore, as to whether the Court ought to enter summary judgment on the back drop of the forestated, Order 36 Rule 1(b) as read with Rule 2 of the CPR offer guidance on the issue. Nevertheless, the Court of Appeal, in *Trikam Maganlal Gohil Another v John Waweru Wamai* [1983] KECA 53 (KLR), observed as follows, concerning summary judgment-;
- “The respondent if he wants leave to defend may show he is entitled to it by affidavit or oral evidence or otherwise. Order XXXV rule 2. So, if the applicant has set out in his affidavit(s) in support of his motion and exhibits facts which are probably true and sufficient to warrant the granting of his prayer for summary judgment the respondent must discharge the onus on him of showing his defence(s) raises triable or bona fide issues. They will be ones of law or fact. If they are of fact, then, bare denials by the respondent or his advocate in a pleading or a letter will not do because there must be a full and frank disclosure of the facts before the court which will be proper and sufficient for it to rule that those issues are raised”.
19. Later, the same Court in *Attorney General v Equip Agencies Ltd* [2006] KECA 370 (KLR) spelt out the rationale behind the provisions of Order XXXV (now Order 36) as follows-;
- “The purpose of the proceedings in an application for summary judgment is to enable a plaintiff to obtain a quick judgment where there is plainly no defence to the claim... The summary nature of the proceedings should not, however, be allowed to become a means for obtaining, in effect, an immediate trial of the action, for it is only if an arguable question of law or construction is short and depends on few documents that the procedure is suitable... A defendant who can show by affidavit that there is a bona fide triable issue is to be allowed to defend that issue without condition.”
20. Therefore, a defendant confronted with a motion seeking summary judgment is required to demonstrate to the Court that he has a reasonable defence and that he ought to be allowed to defend. A reasonable defence is one that raises a bona fide, hence prima facie triable issue(s), though not necessarily one that would ultimately succeed. See the Court of Appeal’s definition of a reasonable defence in the case of *Olympic Escort International Co. Ltd. & 2 others v Parminder Singh Sandhu & another* [2009] KECA 258 (KLR)
21. Here, it is not in dispute that the Plaintiff’s claim is for a liquidated amount inclusive of interest going by the relief(s) sought in the plaint. Meanwhile, it is equally apparent that the Defendants have failed



to offer a response to the Plaintiff's motion, to wit, they had an opportunity to demonstrate to the Court that they had a reasonable defence and ought to be allowed to defend the suit despite failure to file a defence on the matter.

22. Further, upon a perfunctory review of "Annexure LKN-1", "Annexure LKN-2", "Annexure LKN-3", "Annexure LKN-4", "Annexure LKN-5" & "Annexure LKN-6", in the words of Gohil's case, the Court is inclined to accept that the Plaintiff has exhibited facts, which are probably true and sufficient to warrant the granting of the prayer for summary judgment. Whereas the Defendant has failed to discharge the onus of demonstrating triable or bona fide issues of law or fact to entitle it, to leave to defend.
23. In the end, I believe the Court has sufficiently addressed itself to the matter in order to arrive at the unreserved conclusion that the motion is merited and is allowed as prayed.

Who ought to bear the costs of the motion?

24. As to the question of costs, applying my mind to the provisions of Order 36 Rule 8 of the CPR alongside Section 27 of the Civil Procedure Act (CPA), I award the Plaintiff costs of the motion assessed at Kshs. 10,000/=

Orders Accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF FEBRUARY, 2026.

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JANET MULWA.

JUDGE

