

**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**MILIMANI COMMERCIAL & TAX DIVISION**  
**CIVIL CASE NO. E614 OF 2024**

**HON. JUSTICE ALEEM VISRAM**

**5<sup>TH</sup> MARCH, 2026**

**ULTIMATE EMULSIONS LIMITED ..... PLAINTIFF**

**VERSUS**

**NAIROBI CITY COUNTY GOVERNMENT..... DEFENDANT**

**JUDGMENT**

**A. Introduction**

1. Before Court is the Plaintiff's Notice of Motion dated 11<sup>th</sup> October, 2024, brought under Sections 1A and 1B of the Civil Procedure Act and Order 36, rules 1 and 2 of the Civil Procedure Rules. The Plaintiff seeks summary judgment against the Defendant in the sum of Kshs. 35,800,000/= together with interest at 18% per annum from the date of filing suit until payment in full, and costs.
2. The application is supported by the affidavit of Stephen Mutua Kilonzo sworn on 11<sup>th</sup> October, 2024, and the annexures thereto. The pleadings and application

are contained in the record including the Notice of Motion and Supporting Affidavit.

3. Despite service, the Defendant has neither entered appearance nor filed a defence or any response to the application.

**B. Background**

4. The Plaintiff's case is that it was prequalified by the Defendant as a supplier of building and road construction materials for the financial years 2022–2023 and 2023–2024. The documentation evidencing prequalification and subsequent contractual engagement is exhibited in the supporting affidavit.

5. It is deponed that pursuant to various Local Purchase Orders, the Plaintiff supplied bitumen and related materials to the Defendant. In particular: -

a. Under LPO No. 1259 dated 17<sup>th</sup> April, 2023, the Plaintiff supplied goods valued at Kshs. 16,000,000/=.

b. Under LPO No. 7884 dated 3<sup>rd</sup> May, 2023, the Plaintiff supplied goods valued at Kshs. 39,600,000/=.

6. The Defendant subsequently made part payment of Kshs. 39,600,000/=, leaving an unpaid balance of Kshs. 16,000,000/= in respect of Invoice No. 091 dated 8<sup>th</sup> May, 2023.

7. Further, under Purchase Order No. 103 dated 7<sup>th</sup> March, 2024, the Plaintiff supplied 600 drums of bitumen emulsion valued at Kshs. 19,800,000/=, which sum remains unpaid as per Invoice No. KRACU100008349/2 dated 3<sup>rd</sup> April, 2024.

8. The total outstanding sum claimed is therefore Kshs. 35,800,000/=.

**C. Issues for Determination**

9. The issues that arise are: -

- a. Whether the claim qualifies as a liquidated demand within the meaning of Order 36 Rule 1.
- b. Whether the threshold for entry of summary judgment has been met.
- c. Whether any procedural bar exists by reason of the Defendant being a County Government.

**D. Whether the Claim is a Liquidated Demand**

10. Order 36, rule 1 of the Civil Procedure Rules which provides that: -

**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. (Emphasis mine)**

11. The rule therefore permits summary judgment in suits where the Plaintiff seeks judgment for a liquidated demand with or without interest, where the Defendant has appeared but not filed a defence.
12. A liquidated demand is one which is ascertainable and specific, either agreed or capable of precise calculation.
13. The Plaintiff's claim arises from specific purchase orders, delivery notes and invoices. The sums claimed are exact and supported by documentary evidence annexed to the affidavit.
14. The claim is therefore, plainly, for a liquidated sum.

**E. Whether the Threshold for Summary Judgment Has Been Met**

15. The principles governing summary judgment are settled. The remedy is intended to enable a Plaintiff obtain quick judgment where there is plainly no defence to the claim.
16. In *Job Kilach v Nation Media Group Ltd, Salaba Agencies Ltd & Michael Rono [2015] KECA 846 (KLR)* the court stated as follows: -

***“Before the grant of summary judgment, the court must satisfy itself that there are no triable issues raised by the Defendant, either in his statement of defence or in the affidavit in opposition to the application for summary judgment or in any other manner.***

***What then is a defence that raises no bona fide triable issue? A bona fide triable issue is any matter raised by the Defendant that would require further interrogation by the court during a full trial. The Black's Law Dictionary defines the term “triable” as, “subject or liable to judicial examination and trial”. It therefore does not need to be an issue that would succeed, but just one that warrants further intervention by the Court.”***

17. In the present matter the Defendant has neither entered appearance nor filed a defence. There is no affidavit in reply and no material placed before Court to suggest the existence of a triable issue.
18. The documentary material annexed demonstrates: -
  - a. A contractual relationship between the parties.
  - b. Issuance of purchase orders by the Defendant.
  - c. Delivery of goods pursuant thereto.
  - d. Issuance of invoices.
  - e. Part payment by the Defendant, thereby acknowledging the transaction.
19. The absence of any response leaves the Plaintiff’s evidence uncontroverted.

20. In these circumstances, I find there is no basis upon which the matter ought to proceed to full trial. To do so would serve no useful purpose.

**F. Applicability of the Government Proceedings Act**

21. The Defendant is a County Government established under Article 176 of the Constitution.

22. Proceedings against Government entities are subject to the Government Proceedings Act. However, the Act does not bar the entry of judgment against Government; rather, it regulates execution and satisfaction of decrees.

23. Entry of judgment, including summary judgment where appropriate, is not prohibited. The limitation arises at the stage of execution, which must comply with the statutory framework.

24. The present application concerns entry of judgment only. No question of execution arises at this stage.

**G. Interest**

25. The Plaintiff seeks interest at the rate of 18% per annum.

26. While the Court may award contractual or commercial interest where proved, the material placed before Court does not disclose a specific contractual provision binding the Defendant to the rate of 18% per annum.

27. In the circumstances, the appropriate order is to award interest at court rates from the date of filing suit until payment in full.

**H. Costs**

28. Costs follow the event. The Plaintiff has succeeded in its application. There is no reason to depart from the general rule.

**Disposition**

29. For the foregoing reasons, the Court makes the following orders: -

- a. **Summary judgment is hereby entered in favour of the Plaintiff against the Defendant in the sum of Kshs. 35,800,000/=.**
- b. **The said sum shall attract interest at court rates from the date of filing suit until payment in full.**
- c. **The Plaintiff shall have the costs of the suit and of the application.**

30. For avoidance of doubt, satisfaction of the decree shall be subject to the applicable provisions governing proceedings against Government entities.

***Dated and delivered virtually via Microsoft Teams this 5<sup>th</sup> day of March, 2026***

**ALEEM VISRAM, FCI Arb**

**JUDGE**

**In the presence of;  
Court Assistant: Godfrey**

.....for Plaintiff

.....for Defendant

ORIGINAL