



REPUBLIC OF KENYA



**Monarch Insurance Company Limited v Platinum Helix Ventures
East Africa Limited & 2 others (Civil Case E021 of 2025)
[2026] KEHC 2801 (KLR) (Commercial and Tax) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2801 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E021 OF 2025
AA VISRAM, J
FEBRUARY 26, 2026**

BETWEEN

THE MONARCH INSURANCE COMPANY LIMITED PLAINTIFF

AND

PLATINUM HELIX VENTURES EAST AFRICA LIMITED 1ST DEFENDANT

GEORGE GAKUO NDUNG’U 2ND DEFENDANT

TONY WAINAINA KAIRO 3RD DEFENDANT

RULING

1. Before Court is the Chamber Summons dated 27th March, 2025, brought under Order 47 Rule 8, Order 51 Rule 1 of the Civil Procedure Rules (“the Rules”) and all enabling provisions of the law. The Plaintiff seeks, principally, that the Ruling of the Deputy Registrar delivered on 13th March, 2025, declining its Request for Judgment dated 5th February, 2025, be set aside, that the Request for Judgment be allowed, and that the matter be set down for formal proof.
2. The application was served. The Court had directed the Defendants to file a formal response within 14 days. No response has been filed. The application is therefore unopposed.
3. The material background is not in dispute. The Plaintiff filed suit on 16th January, 2025. Summons to Enter Appearance were issued on 21st January, 2025, and served together with the Plaint and accompanying documents. An Affidavit of Service was filed on 4th February, 2025.
4. The time for entry of appearance lapsed on or about 5th February, 2025. No Memorandum of Appearance was filed.



5. On 5th February, 2025, the Plaintiff lodged a Request for Judgment in default of appearance.
6. Thereafter, on 3rd March, 2025, the firm of Ogwoka Ndege & Company Advocates filed and served a Statement of Defence, List of Witnesses and List of Documents dated 19th February 2025. No Memorandum of Appearance was filed. No leave of Court was sought or granted for the filing of the Defence out of time.
7. On 13th March, 2025, the Deputy Registrar declined the Request for Judgment on the basis that the Defendants had entered appearance and filed a Defence.
8. The question that falls for determination is whether that decision should be set aside, and the Request for Judgment allowed.

Analysis and Determination

9. Entry of appearance is governed by Order 6, rule 2 of the Rules. Appearance is effected by filing a Memorandum of Appearance. It is that document which formally submits the Defendant to the jurisdiction of the Court, and triggers the timelines set out under Order 7.
10. The record placed before this Court discloses no Memorandum of Appearance filed by any of the Defendants. The filing of a Defence, without first entering appearance, is irregular. It does not amount to compliance with Order 6, rule 2.
11. Further, even assuming that the Defence could stand independently, it was filed outside the time prescribed. Under Order 7, rule 1, a Defence is to be filed within 14 days after entry of appearance. No appearance having been entered, the Defence was doubly defective. No application for enlargement of time under Order 50, rule 6 was made.
12. The Rules of procedure are designed to ensure certainty and fairness. While the Court retains discretion to excuse non-compliance in appropriate cases, such discretion is invoked upon application and upon explanation. None has been offered here. The application before Court is unopposed. There is no material to justify the departure from the prescribed procedure.
13. The Deputy Registrar declined the Request on the footing that appearance had been entered and a Defence filed. On the record now before this Court, that premise while practical, and made in good faith, was incorrect. There was no Memorandum of Appearance on record. In those circumstances, the Request for Judgment in default of appearance was properly made in accordance with the Rules.
14. The power of this Court to set aside or vary an order of the Deputy Registrar is well established. Where a decision is founded on an error apparent on the record or on a misapprehension of the procedural position, the Court is entitled to intervene.
15. I am satisfied that the Defendants failed to enter appearance within time; that no leave was sought to file the Defence out of time; and that the Defence as presently filed, is therefore irregular and improperly on record.
16. In the absence of any opposition or explanation, there is no basis upon which the Court should deny the Plaintiff the consequence provided by the Rules.

Orders

- a. The Chamber Summons dated 27th March, 2025 is allowed.
- b. The Ruling of the Deputy Registrar delivered on 13th March, 2025 declining the Plaintiff's Request for Judgment dated 5th February, 2025, is hereby set aside.



- c. The Plaintiff's Request for Judgment dated 5th February, 2025, is allowed.
- d. The Statement of Defence dated 19th February, 2025, and filed on 3rd March, 2025, is struck out for having been filed without entry of appearance and without leave.
- e. The matter shall proceed to formal proof on a date to be fixed by the Registry.
- f. Costs of the application shall be in the cause.

17. It is so ordered.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 26TH DAY OF FEBRUARY, 2026

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Godfrey

.....for Plaintiff

.....for 1st Defendant

.....for 2nd Defendant

.....for 3rd Defendant

