



**East Africa Properties Limited v Premier Bank Limited (Commercial Case E002 of 2025) [2026] KEHC 3847 (KLR) (18 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3847 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
COMMERCIAL CASE E002 OF 2025  
JN ONYIEGO, J  
MARCH 18, 2026**

**BETWEEN**

**EAST AFRICA PROPERTIES LIMITED ..... PLAINTIFF**

**AND**

**PREMIER BANK LIMITED ..... DEFENDANT**

**RULING**

1. Vide a plaint dated 7-7-2023 and filed the same day before the Garissa land and environment court, the plaintiff sought for orders that;
  - a. A permanent injunction to issue against the defendant, its agents, assigns, representatives and or anybody acting for it restraining them from collecting rent in property known as Garissa town block 4/43.
  - b. The defendant pays a sum of kshs 46,469,795
  - c. Costs and interests of this suit
  - d. Any other relief that this court may deem fit
2. On 22-7-23, the defendant entered appearance and thereafter went mute until the plaintiff applied for interlocutory judgment vide its letter dated 27-10-2023. Interlocutory judgment was subsequently entered on 4-12-2023 by Justice Mutungi of ELC. On 22-7-2024, by the consent of both parties, the matter was referred to mediation. Parties engaged in numerous negotiation with a view to recording an outside court settlement to no avail.
3. On 26-6-2025, the ELC transferred the matter to the high court terming it as a commercial case.
4. When the file was then placed before the high court on 25-9-2025 for directions, parties agreed on the plaintiff to amend the plaint within 15 days and upon service, the respondent to file their defence



within 14 days and the plaintiff to file reply to the defence within 7 days. Parties were to exchange witness statements and documentary exhibits. The plaintiff filed their amended plaint on 17-11-2025. The defendant sought for 21 days to file defence while arguing that they had not been served with the amended plaint. The court granted the defendant's prayer and directed them to file defence within 21 days.

5. On 17-12-2025, the defendant confirmed that they had not filed defence due to change in sharia law on banking and that there was a new bank president. Mr. Anyoka for the plaintiff left it upon the court to decide. The court further extended time thus allowing the defendant to file defence within 14 days in default the plaintiff to file an application seeking entry of interlocutory judgment. Mention was then fixed for 24-2-2026 to confirm compliance.
6. On 24-2-2026, Mr. Anyoka for the plaintiff sought for entry of interlocutory judgment on account that no defence had been filed on time. In response, the defendant argued that they had filed their defence. From the record there appears to be a defence filed and dated 23-2-2026 which period exceeds the 14 days granted. Mr Anyoka insisted on entry of interlocutory judgement. The court then reserved the instant ruling on whether interlocutory judgment should be entered or not.
7. To start with, this matter was originally filed as an ELC case. Interlocutory judgment was entered by that court which later disqualified itself for lack of jurisdiction and transferred the matter to the high court. Before the high court, parties agreed on extended time for the plaintiff to file amended plaint within 15 days. The plaintiff never complied with that time line until 17-11-2025 over two months down the line.
8. Even after the defendant failed to file their defence within the prescribed time, the plaintiff was directed to file a request for entry of interlocutory judgment a directive they never complied with. As it stands now, there is no fresh request made for entry of interlocutory judgment in default of filing defence. Counsel seemed to rely on the original request which was made before the ELC which was in any event granted albeit without jurisdiction. I have no request against which I can grant the prayer sought.
9. As to whether I can grant similar orders on the original request, I cannot as there is already an order granting it which has not been set aside although unenforceable. The plaintiff should have filed a fresh request as directed. In the circumstances, the orders cannot issue.
10. In any event, a court can on its own motion enlarge time where certain timelines have not been met. The defence filed before the compliance date which was 24-2-2026 just as the plaintiff failed to meet the timeline for filing the amended plaint, can apply *mutatis mutandis*. That is what substantive justice demands under Section 1A, 1 B and 3A of the [civil procedure Act](#).
11. Since there is no request to enter interlocutory judgment and considering that a defence has been filed slightly outside the stated timelines, I will exercise discretion in favor of the defendant and deem the defence as duly filed. See Section 95 of the [civil procedure Act](#) which provides that;

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired”



12. Having regard to the defence filed and further taking into account article 50(1) of *the constitution*, it is fair to accord every person who approaches the court, his day in court. In the case of Sebei District Administration vs Gasyali & Others (1968) EA 300 Sheridan J observed the following on timelines;

“The nature of the action should be considered. The defence if one has been brought to the notice of the court, however irregularly, should be considered, the question as to whether the plaintiff can reasonably be compensated by costs for any delay occasioned should be considered and finally, I think, it should always be remembered that to deny the subject a hearing should be the last resort.”

13. In view of the above holding therefore, the plaintiff is directed to file their reply to the defence within 14 days. Parties shall then appear before the incoming judge for further directions on pre-trial conference on 20-4-2026. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18<sup>TH</sup> DAY OF MARCH 2026**

.....

**J.N.ONYIEGO**

**JUDGE**

