



REPUBLIC OF KENYA



**Rift Valley Products Limited v Aaryan Investments Limited (Civil Case
E262 of 2023) [2025] KEMC 334 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEMC 334 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CIVIL CASE E262 OF 2023
PA NDEGE, SPM
OCTOBER 28, 2025**

BETWEEN

RIFT VALLEY PRODUCTS LIMITED PLAINTIFF

AND

AARYAN INVESTMENTS LIMITED DEFENDANT

RULING

1. The Defendant to the suit herein, Aaryan Investments Limited, brought the application herein seeking to set aside the default judgment entered herein against it on 10/06/2023 and all subsequent orders and proceedings and the court be pleased to order the Suit be determined on merit. That the court then be pleased to allow the Applicant to defend the suit unconditionally; and costs of the Application be provided for.
2. The said application is supported by the grounds on the face of the application as well as the affidavit sworn by the Defendant/ Applicant's director, Vimal Bhimji Shah. The plaintiff, Rift Valley Products Limited, filed a Replying Affidavit of one of its directors, Rameshchandra Khagram, sworn at Nakuru on 20/08/2025 opposing the application. Parties herein filed, and I do believe, exchanged their written submissions and arguments.

Setting Aside and The Guiding Principles

3. It is a deeply entrenched principle that a court of competent jurisdiction can vary, vacate or set aside ex-parte proceedings and judgment it entered in default pursuant to a number of factors. Also, the power of the court and its discretion to set aside such a judgment to allow the hearing of a matter inter partes is unfettered. The court has a wide discretion to set aside such judgments where the defendant failed to enter appearance and/or file a defense. This jurisdiction is exercised to avoid injustice and hardship resulting mainly from accident, inadvertence or excusable mistake or error. In normal circumstances,



courts do lean towards a policy of deciding cases on merits rather than encourage ex parte or default judgments based on procedural technicalities. There is also a constitutional requirement to that effect¹.

4. The Court of Appeal in *James Kanyiiita Nderitu & Another -vrs- Marios Philotas Ghikas & Another* [2016] e KLR, expressed itself thus,

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 defense, 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 defense, as the case may be; the length of time that has elapsed since the default judgment was entered; whether the intended defense raises triable issues; the respective prejudice each party is likely to suffer; whether on the whole it is in the interest of justice to set aside the default judgment, among other... (Emphasis added)

Determination

5. The applicant herein attributed the failure to enter appearance and file defense to lack of service. It contends that the affidavits of service relied on herein are false and hence perjuries. In my humble view, and as correctly argued by the learned counsel for the plaintiff/ respondent, this explanation advanced is rather lame as they have not sought to cross-examine the process server and the deponents of the affidavit of service as to the correctness of the averments therein. Furthermore, the affidavit of service disclosed a valid physical service, as opposed to service via email as alleged.
6. That notwithstanding, I am supposed to look at whether there is any defence raising a triable issue. I have gone through the annexed draft and I do find that it discloses a a serious triable issue mainly as to the co-relation between the company pleaded in the plaint herein and the defendant herein.
7. Having found a defence raising triable issue herein, I do hereby allow the application, but subject to the payment of the costs so far incurred by the plaintiff in these proceedings. The payments be done before the draft defence is filed and, in any case, within 30 days of assessment.

RULING DATED, SIGNED AND DELIVERED AT NAKURU THIS 28TH DAY OF OCTOBER, 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's counsel: Mwenesi

Defendants' Counsel: Torotwa

Defendant/ Applicant: n/a

¹ Article 159. (1) Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution. (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles – (a) justice shall be done to all, irrespective of status; (b) justice shall not be delayed; (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3); (d) justice shall be administered without undue regard to procedural technicalities; and (e) the purpose and principles of this Constitution shall be protected and promoted



CT. Mn to confirm compliance 05/12/25

