



**Springs International Enterprises Limited v Rural Electrification
and Renewable Energy Corporation (Civil Suit E282 of 2024)
[2025] KEHC 854 (KLR) (Commercial & Admiralty) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 854 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
CIVIL SUIT E282 OF 2024
RC RUTTO, J
JANUARY 31, 2025**

BETWEEN

SPRINGS INTERNATIONAL ENTERPRISES LIMITED PLAINTIFF

AND

**RURAL ELECTRIFICATION AND RENEWABLE ENERGY
CORPORATION DEFENDANT**

JUDGMENT

1. By Notice of Motion dated 12th August 2024, the defendant has invoked the provisions of sections 1A, 1B, 3A and 95 of the *Civil Procedure Act*, order 12 rule 7 and order 50 rule 6 of the Civil Procedure Rules seeking the following reliefs:
 1. That this Honourable Court be pleased to set aside the request for default judgment to be entered against the defendant;
 2. That this Honourable Court be pleased to enlarge the time within which the defendant is to file its defence;
 3. That this Honourable Court be pleased to deem the draft statement of defence already filed herein to be properly on record;
 4. That the costs of this application be provided for.
2. The application is supported by the grounds on the body of the application and the supporting affidavit of Leah Odhiambo, advocate of the High Court of Kenya working at the respondent company. The facts giving rise to the Motion are that on receipt of the summons to enter appearance, the applicant filed its memorandum of appearance on 19th June 2024. Thereafter, it began to conduct



internal investigations with intent to draft a response to the respondent's plaint. The applicant has annexed its draft statement of defence dated 1st August 2024. It also stated that on 12th August 2024, it logged onto the e-filing platform in order to file its statement of defence only to realize that the respondent had filed an amended plaint dated 19th July 2024. Subsequently on 26th July 2024, it filed a request for judgment. It averred that the amended plaint and request for judgment were never served upon it.

3. The applicant urged this court to allow the application on the following grounds: it had prepared a draft statement of defence that raised several triable issues; it would suffer irreparable loss if leave is not granted to defend the suit; it had an unreserved right to be heard; no prejudice would be occasioned upon the respondent if the application is granted; and it is in the interest of justice that the application be granted as prayed.
4. The application is opposed through the Grounds of Opposition and a list and bundle of authorities both dated 25th September 2024. The plaintiff seeks that the application be dismissed for the following reasons: the applicant filed its statement of defence on 12th August 2024 after the request for judgment was filed on 26th July 2024; it is therefore misleading to the court that the same had not been filed; the application is thus moot and an attempt to move this court to remedy an illegality; and the application lacked merit and ought to be dismissed with costs.
5. The application was heard on 8th October 2024. Counsel for the applicant urged that the application was merited and ought to be granted as prayed. In response to the Grounds of Opposition filed by the respondent, it was submitted that the facts as set out in its application and supporting affidavit were not contested; they remained an accurate reflection of the facts. It was reiterated that order 36 rule 1, 2 and 3 of the Civil Procedure Rules were not complied with in the manner set out therein. Finally, the applicant argued that it has approached the court with clean hands and was therefore entitled to the reliefs sought.
6. On the part of the respondent, Counsel submitted that the applicant misled the court to the extent that it had considerably delayed in instituting the present application and was therefore undeserving of the orders sought. It was submitted that the applicant was not deserving of the prayers for enlargement of time and leave to file its statement of defence out of time as that would amount to condoning an illegality since the statement of defence was filed on 12th August 2024. It was pointed out that the prayer seeking to set aside *ex parte* judgment was premature as the request for judgment had not been allowed. Further, that the respondent continues to suffer loss since the suit had been filed four months prior. The respondent prayed that for those reasons, the application be dismissed with costs.
7. I have considered the application, the affidavit in support, the annexure thereto, the response and the parties' oral submissions. The issue for determination is whether this court should exercise its discretion by setting aside the request for entry of judgment dated 26th July 2024 and extend time for the applicant to file its defence?
8. The applicant urges this court to set aside the request for judgment dated 26th July 2024 on grounds that the same, together with the amended plaint, were not served upon it. The respondent's position is that there is nothing to set aside since there is no default judgment before this court. I have perused the court file and do find that indeed as stated by the respondent, there is no entry of default judgment in place. All that is there is a request for default judgment filed by the respondent. The request was not acted upon and is pending before the trial court. Can this court therefore set aside this request?
9. It is instructive to note that a request for judgment does not signify the issuance of a default judgment. For there to be a default judgment, the court is obligated to evaluate and be satisfied that it's a matter



deserving an interlocutory entry of judgment. In this instance, the trial court did not pronounce itself on the request for entry of judgment. As such, the same remains a request pending determined by the court. Consequently, once the issue of enlargement of time is addressed, the prayer concerning that the request for set aside will be subsumed therein.

10. As to whether this court should enlarge time for the applicant to file its statement of defence, it is observed that the applicant did not comply with the requirements of order 7 rule 1 of the Civil Procedure Rules. Upon entering appearance, the applicant ought to have filed its statement of defence by 3rd July 2024 with speed. The applicant's contention was that on 12th August 2024, when it was in the process of filing its defence, it became aware of the respondent's amended plaint dated 19th July 2024 and request for entry of judgment dated 26th July 2024. That they were never served. Notably, the respondent has not provided any evidence to counter that proper service, or at all, of the amended plaint was effected.
11. This court notes that section 95 of the *Civil Procedure Act* and order 50 rule 6 of the Civil Procedure Rules donate discretionary powers to it to extend time. This unfettered power however must be exercised judiciously. In the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral & Boundaries Commission & 7 others* (2014) eKLR the Supreme Court issued the following parameters when considering such an application:
 - a. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
 - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis;
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 - e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - f. Whether the application has been brought without undue delay.
 - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time."
12. Guided by the above authority, I find that the prayer for enlargement of time is merited on the grounds that first, despite filing and serving the applicant with the plaint, the respondent failed to serve the applicant with the amended plaint, a fact not controverted by the respondent. Secondly, upon perusal of the draft defence this court notes that it raises triable issues which invite an audience before this court. Thirdly, it is in the interest of justice the applicant be accorded an opportunity to be heard, since the basis for the delay was explained to the extent that the applicant elected to take time to conduct internal investigations with intent to draft a response. This court also notes that to deny the applicant that right would amount to a travesty of justice and a violation of Article 50 of *the Constitution* which is an inalienable right.
13. However, it cannot be ignored that the applicant failed to initially file its statement of defence in compliance with the law when it was duly served with the plaint. Naturally, the respondent invoked its right to have this court enter judgment in the interim under the pretext that the applicant was



not interested in defending this case. Certainly, there was delay that has spilled over to a delay in the determination of this matter on the part of the applicant. The respondent ought to be compensated by an award of costs. I therefore find it necessary to make orders that will balance the pendulum and competing interests herein. Consequently, and in the interest of justice, I make the following orders:

1. The respondent shall serve the applicant with the amended plaint dated 19th July 2024 within seven (7) days from the date hereof;
2. Thereafter, the applicant shall file and serve its statement of defence within fourteen (14) days from the date of service of that amended plaint;
3. The applicant shall meet the respondent's throw away costs in the sum of Kshs. 30,000.00 within 14 days from the date of this order;
4. If the orders in (2) and (3) above are not complied with, the orders herein shall automatically lapse without any further reference to this court;
5. Each party shall bear its own costs of the application.

Orders accordingly

DELIVERED, DATED AND SIGNED THIS 31ST DAY OF JANUARY 2025

RHODA RUTTO

JUDGE

For Appellant:

For Respondent:

Court Assistant:

