



Gulf African Bank Limited v Mansa Technologies Limited & 2 others (Civil Case E041 of 2024) [2025] KEHC 373 (KLR) (Commercial and Tax) (27 January 2025) (Ruling)

Neutral citation: [2025] KEHC 373 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E041 OF 2024
A MABEYA, J
JANUARY 27, 2025**

BETWEEN

GULF AFRICAN BANK LIMITED PLAINTIFF

AND

MANSA TECHNOLOGIES LIMITED 1ST DEFENDANT

MOHAMUD MURSAL MAALIM 2ND DEFENDANT

MOHAMMED HUSSEIN ADAN 3RD DEFENDANT

RULING

1. This ruling is in respect of the Defendants' application dated 6/5/2024 wherein they seek orders that: -

- "i) ...
- ii) That this Honourable court stay execution of the ex-parte judgment entered on 9th April 2024, by Hon S. Bett and all other consequential orders against the Defendants pending the hearing and determination of this application.
- iii) That this honourable court does set aside the interlocutory judgment and ex-parte judgment entered against the Defendants on 9th April 2024 by the Hon Magistrate S. Bett Deputy Registrar pending the hearing and determination of this application.
- iv) The Defendants be granted leave to file their defence out of time and the suit be heard afresh inter parties.



- v. That the application be served on the Plaintiff/Respondent and heard by inter-parties on such date and time as this honourable court may direct.”
2. The application is grounded upon the facts set out on the face of it and the affidavit of Purity Waikwa, the advocate in conduct of this matter on the behalf of the defendants sworn on 6/5/2024. She deposed that the firm of Ondieki Orangi Advocates filed a Memorandum of Appearance dated 20/2/2024 but failed to contact the 1st Defendant on time to get full and proper instructions until it was served with a Notice of entry of Judgment on 25/4/2024.
 3. That judgment was entered on 9/4/2024 and the defendants was apprehensive that the Plaintiff will proceed with execution. She claims the defence raises triable issues which ought to be heard on merit. The defendants claim that the judgment is for a substantial sum and if not set aside the defendants will suffer great prejudice and irreparable harm, while the Plaintiff will suffer no prejudice as an award of damages can compensate it.
 4. The Plaintiff opposed the application through the replying affidavit of Lawi Sato the advocate in conduct of the matter sworn on 4/6/2024. He avers the defendants were indolent in bringing the application having been served with the Notice of entry of judgment on 26/4/2024. There is no justifiable reason for the delay. He deposed that the defence contains falsehoods and contains mere denials and raises no triable issues.
 5. The parties canvassed the application through written submissions, which I have considered. The main issue for determination is whether the Defendants have made a case for setting aside the interlocutory judgment.
 6. The Court is vested with wide powers to set aside interlocutory judgments on just terms. The prayer sought is discretionary and ought to be exercised judiciously. The Court of Appeal in *Richard Nchapi Leiyagu v IEBC & 2 others* [2013] eKLR expressed itself as follows: -

“We agree with those noble principles which go further to establish that the court’s discretion to set aside an ex-parte judgment or order for that matter, is intended to avoid injustice or hardship resulting from an accident, inadvertence or inexcusable mistake or error but not to assist a person who deliberately seeks to obstruct or delay the course of justice.”
 7. In the present case, it is not disputed that the defendants were duly served with the Plaint and summons to enter an appearance on 13/2/2024, through their advocate the defendants filed a Memorandum of Appearance dated 20/2/2024 but failed to file a defence which precipitated the filing of a request for judgment on 7/3/2024. Interlocutory judgment was entered on 9/4/2024.
 8. The defendants were notified of the entry of judgment on 25/4/2024. They then filed the present application on 6/5/2024. It took the defendants close to 3 months from the date of service of summons and pleadings to file the present application which the Court finds to be inordinate.
 9. The defendants admit that a defence was not filed within the prescribed timelines. The excuse given for the delay is that the advocate did not have full instructions to proceed with the matter. The defendants argue the draft defence raises triable issues.
 10. In a case for setting aside an interlocutory judgment one of the key considerations is whether a defendant has defence on merit. I have perused the draft defence. The defendants deny liability and aver that they ceased being the directors of the 1st defendant and the liability was transferred to Abdisalam Jamaa Ahmed upon the sale of the company to him.



11. From the record, I note the Plaintiff's claim against the defendants is for the sum of Kshs 46,164,114.94 with interest. That is a colossal sum by any means. I am satisfied that the draft defence contains a reasonable defence as the Court will need to interrogate on the party's liability to satisfy itself on the plaintiff's claim.
12. Section 1A and 1B of the Civil Procedure Act which provides for the overriding objectives aims at just determination and efficient disposal of proceedings. In achieving the overriding objective, the Court should consider giving parties a fair hearing which is achieved by giving parties their day in Court.
13. In *Sebei District Administration v Gasyali & others* (1968) EA 300 Sheridan J. observed that: -

“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 of the court”
14. The Plaintiff avers the draft defence consists of mere denials and that the defendants admit owing the amount claimed. I have already found that the defence is arguable and the court will need to interrogate itself on the liability of each party in a full trial and thus the need to have each party present its case for a just determination.
15. In view of the foregoing, it is fair to grant the defendants an opportunity to defend themselves on merit. However, considering that the judgment was regular, the defendants must shoulder some thrown away costs assessed at Kshs. 50,000/-.
16. Accordingly, the application is allowed as prayed. The defendants to pay within 14 days of this ruling costs assessed at Kshs. 50,000/-. The defendants to file and serve their defences within 14 days of this ruling.

It is so ordered.

SIGNED AT NAIROBI THIS 16TH DAY OF JANUARY, 2025.

A. MABEYA, FCI ARB

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JANUARY, 2025.

F. GIKONYO

JUDGE

