



**Sevya Trading Limited v Qatar Plastic Industrial Limited (Commercial Case E046 of 2025)  
[2025] KEHC 12501 (KLR) (Commercial and Tax) (1 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12501 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E046 OF 2025  
JWW MONG'ARE, J  
SEPTEMBER 1, 2025**

**BETWEEN**

**SEVYA TRADING LIMITED ..... PLAINTIFF**

**AND**

**QATAR PLASTIC INDUSTRIAL LIMITED ..... DEFENDANT**

**RULING**

1. The Defendant has by under a Certificate of Urgency on 24<sup>th</sup> February 2025 moved this Honourable Court by a Notice of Motion application brought under Article 159 of the Constitution, Sections 1A, 1B, 3A and 95 of the Civil Procedure Act and Order 12 and Order 51 of the Civil Procedure Rules seeking the following reliefs:-
  1. Spent
  2. Spent
  3. That this Honourable Court be pleased to issue an order of setting aside the order issued on 24<sup>th</sup> February, 2025 allowing summary judgment and/or judgment on admission.
  4. That the Honourable Court be pleased to extend the period to file the response to the Notice of Motion dated 4<sup>th</sup> February 2025.
  5. That consequently, this Honourable Court grant the Applicant/Defendant leave to defend the Notice of Motion dated 4<sup>th</sup> February 2025 and that the Replying affidavit sworn on 14<sup>th</sup> February 2025 be marked/ordered as duly filed upon payment of requisite fees.
  6. That costs of this Application be provided for.



2. The Application is supported by the grounds set out on its face and the supporting and a further affidavit sworn by Kennedy Mutiso on 24<sup>th</sup> February 2025 and 25<sup>th</sup> April 2025 respectively. The application is opposed and the Plaintiffs have filed ground of opposition dated 16<sup>th</sup> April 2025 and a replying affidavit sworn by Ritu Bhattessa on 17<sup>th</sup> April 2025. Both parties have filed written submissions which I have carefully considered.
3. From the pleadings filed before this Court by the Applicant the Court is being asked to set aside its orders of 24<sup>th</sup> February 2025 allowing the Application filed by the Plaintiff on 4<sup>th</sup> February 2025 that allowed the entry of judgment on admission. It the Plaintiff's position that all along they intended to oppose the application by the Plaintiff but due to miscommunication the Applicant failed to file its replying affidavit on time. The applicant urges the Court to vacate its orders and allow them to defend their suit as they argue that they have a good defence that raises triable issues that can only be determined after a full trial.
4. In opposing the present application, the Plaintiff filed grounds of opposition and replying affidavit. The Plaintiff argues that the present application is aimed at delaying the conclusion of the matter and denying them the fruits of their judgment properly obtained. The Plaintiff argues that the Defendant has prior to filing the suit admitted to being indebted to the Plaintiff as claimed in the plaint and should not be allowed to run away from its obligations. The Plaintiff argues that Defendant had ample opportunity to defend the application for summary judgment when it was filed as they had been properly served but opted not to do so in the time allowed by the law and urges this Court to dismiss the present application and allow execution to proceed. The Plaintiff argues that the Defendant filed its defence while the Application for summary judgment was pending and without leave of the Court as the window for filing pleadings had closed and urges the Court to find that the said defence is not properly before the Court.

### **Analysis and Determination**

5. I have carefully considered the application filed herein. I have equally considered the affidavits filed in support and in opposition to the application and the rival submissions and note that this Court is called to determine if the present application is merited. The Court notes that the application is premised on the constitutional underpinning at Article 159 of the Constitution which urges the Court to render substantive justice without procedural technicalities. However, the Courts have held that Article 159 of the Constitution is not a panacea to correct all irregularities.
6. From the record made available, the Court notes that the Applicant was fully aware of the application that gave rise to the orders being challenged by the present application. The Court notes that the Applicant has moved this Court under Order 12 and section 95 of the Civil Procedure Rules and Act. The Said Order 12 provides as follows:-

“Setting aside judgment or dismissal [Order 12, rule 7] Where under this Order judgment has been entered or the suit has been dismissed, the Court, on application, may set aside or vary the judgment or order upon such terms as may be just.”
7. Section 95 of the Civil Procedure Act provides as follows;

“95. Enlargement of time; 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.”



8. The Court notes that though the applicant has moved the Court to be allowed to file a response and defend the application filed by the Plaintiff on 4<sup>th</sup> February 2025, there has been no basis laid by the Applicant as to why when it was properly served, it did not file any response thereto. The Court further notes that even the defence to the suit was filed while the application for summary judgment was pending for determination before Court and the same was done without appropriate leave being sought.
9. Be that as it may, I have perused the draft defence and the draft replying affidavit to the Application of 14<sup>th</sup> February 2025. I note that from the said draft pleadings the Applicant does not deny its indebtedness to the Plaintiff. Instead it raises issue of jurisdiction by the Court and states that the cause of action arose in Kakamega and not Nairobi and hence the suit is filed before the wrong forum. May I reiterate that the High Court has original and unlimited jurisdiction in civil and criminal matters by constitutional dictates of Article 165(3) of the Constitution and is not bound by geographical delimitations on the place of filing suits. Article 165(3)(a) provides as follows; -
  - (3) Subject to clause (5), the High Court shall have—
    - (a) unlimited original jurisdiction in criminal and civil matters;
10. Flowing from the above considerations, I have considered the present application. I find that the Applicant has failed to persuade the Court that it is deserving of the orders sought as no sufficient grounds have been placed before this Court to establish why the Applicant having been properly served with the motion of 4<sup>th</sup> February 2025, failed to file a response thereto. I also find that there is no sufficient material availed to this Court to persuade it to interfere with its decision of 24<sup>th</sup> February 2025. This therefore means that the present application before this Court cannot stand and it therefore fails.

### **Conclusion and Disposition**

11. For these reasons, I dismiss the Defendant's application dated 24<sup>th</sup> February 2025 with costs to the Plaintiff. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1<sup>ST</sup> DAY OF SEPTEMBER, 2025**

**J. W. W. MONGARE**

**JUDGE**

In the presence of

Mr. Mogeni for the Plaintiff.

Ms. Akinyi holding brief for Mr. Mbaabu for the Defendant.

Amos- Court Assistant

