

REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT NAIROBI
MILIMANI COMMERCIAL COURTS
SCCCOMM NO. E1016 OF 2021

CAROLINE GICHOHI ----- CLAIMANT/RESPONDENT

VERSUS

LESEDI HOMES LIMITED ----- RESPONDENT/APPLICANT

CERTIFICATE OF URGENCY

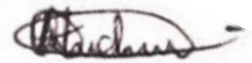
I EVA W. MWENDWA an Advocate of the High Court of Kenya practising as such under the firm of **MUCHUI-MWENDWA & CO. ADVOCATES** of P.O. Box 5534-00100, **NAIROBI** do certify this application to be extremely urgent for the reasons:

- (a) **THAT** default Interlocutory Judgment was entered against the Respondent/Applicant on **27th January, 2022**.
- (b) **THAT** however, the Parties had commenced attempts to have the matter settled out-of-Court and no impasse had been communicated by Advocate for the Claimant/Respondent to warrant continued prosecution of this case.
- (c) **THAT** the same was through the Advocates on record for the Respondent/Applicant thus the Advocate for the Claimant/Respondent was fully aware of the former's hand in the out-of-Court settlement negotiations.
- (d) **THAT** the Mention Notice for **27th January, 2022** was never served upon the Respondent thus it was unaware of the said date.
- (e) **THAT** most unfortunately, the Advocate for the Claimant/Respondent failed and/or omitted to bring it to this Honourable Court's attention that the Parties were engaged in attempted out-of-Court settlement thus to give the matter another Mention date as opposed to having the Court Rule on it in its first Mention.
- (f) **THAT** indeed, the entry of the default judgement puts the Respondent/Applicant at a greatly exposed position since the lack of entry of appearance was only due to the aforementioned attempts to settle the matter amicably which it endeavoured with utmost good faith.
- (g) **THAT** the Respondent/Applicant is ready and willing to pay the Claimant/Respondent **as per the terms of the contract** which the

Respondent/Applicant is humbly submitting to this Court for interpretation.

- (h) **THAT** therefore, the Respondent/Applicant is desirous of defending the suit herein and indeed having its Counterclaim adjudicated upon in its efforts to have justice dispensed accordingly owing to the uncommunicated failure of the out-of-Court settlement.
- (i) **THAT** unless this Honourable Court sets aside the default interlocutory judgment, the Respondent/Applicant will be condemned unheard; which is against the rights of natural justice.

DATED at NAIROBI this 28th day of February, 2022.



MUCHUI-MWENDWA & CO.
ADVOCATES FOR THE RESPONDENT/APPLICANT

DRAWN AND FILED BY:

MUCHUI-MWENDWA & CO. ADVOCATES,
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EMAIL: muchui.mwendwaadvocates@gmail.com

PRACTICE NO: LSK/2021/07617

ADMISSION NO: P/105/14513/18

TO BE SERVED UPON:

NORMAN OTIENO & CO. ADVOCATES,
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REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT NAIROBI
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SCCCOMM NO. E1016 OF 2021

CAROLINE GICHOHI ----- CLAIMANT/RESPONDENT

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LESEDI HOMES LIMITED ----- RESPONDENT/APPLICANT

NOTICE OF MOTION

**(Under Section 3A of the Civil Procedure Act, 2010; Section 41 (1)(a) & (2),
42 &43 of the Small Claims Court Act, 2016 and all other enabling
provisions of the law)**

TAKE NOTICE that this Honourable Court will be moved on the.....day of2022 at 9.00 O'clock in the forenoon or so soon thereafter so as Counsel for the Applicant herein may be heard on an application for **ORDERS**:

1. **THAT** this Application be certified urgent and service be dispensed with in the first instance.
2. **THAT** the Law Firm of **MUCHUI-MWENDWA & CO. ADVOCATES** be allowed to come on record on behalf of the Respondent/Applicant and the Notice of Appointment of Advocates filed be deemed as properly and duly filed.
3. **THAT** this Honourable Court be pleased to stay the interlocutory judgement and all consequential Orders pending hearing and determination of this Application.
4. **THAT** this Honourable Court be pleased to review, vary and/or set aside default interlocutory judgment and all consequential Orders pending hearing and determination of this Application.
5. **THAT** this Honourable Court be pleased to stay the interlocutory judgement and all consequential Orders pending hearing and determination of this suit.
6. **THAT** this Honourable Court be pleased to review, vary and/or set aside default interlocutory judgment and all consequential Orders pending hearing and determination of this suit.
7. **THAT** this Honourable Court be pleased to allow the Respondent/Applicant to file its Defence and the draft Statement of

Defence annexed to the Application dated **9th February, 2022** be deemed as properly and duly filed.

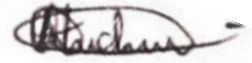
8. **THAT** the costs be provided for.

WHICH APPLICATION is supported by the Affidavit of **GEOFFREY KAHUNGI KIRAGU**, a Director of the Respondent/Applicant herein and on the **GROUND**s:

- (a) Default Interlocutory Judgment was entered against the Respondent/Applicant on **27th January, 2022**.
- (b) However, the Mention Notice for the said date on this matter was never served on the Respondent/Applicant thus it was unaware of the said date.
- (c) Indeed, the Parties had commenced attempts to have the matter settled out-of-Court in December, 2021 and no impasse had been communicated by Advocate for the Claimant/Respondent to warrant continued prosecution of this case.
- (d) The said attempts were through the Advocates on record for the Respondent/Applicant thus the Advocate for the Claimant/Respondent was fully aware of the former's hand in the out-of-Court settlement negotiations.
- (e) That most unfortunately, the Advocate for the Claimant/Respondent failed and/or omitted to bring it to this Honourable Court's attention that the Parties were engaged in attempted out-of-Court settlement thus to give the matter another Mention date as opposed to having the Court Rule on it in its first Mention.
- (f) Therefore, the entry of the default judgement puts the Respondent/Applicant at a greatly exposed position since the lack of entry of appearance was only due to the aforementioned attempts to settle the matter amicably which it endeavoured with utmost good faith.
- (g) The Respondent/Applicant is ready and willing to pay the Claimant/Respondent **as per the terms of the contract** which the Respondent/Applicant is humbly submitting to this Court for interpretation.
- (h) Therefore, the Respondent/Applicant is desirous of defending the suit herein and indeed having its Counterclaim adjudicated upon in its efforts to have justice dispensed accordingly owing to the uncommunicated failure of the out-of-Court settlement.

- (i) That unless this Honourable Court sets aside the default interlocutory judgment, the Respondent/Applicant will be condemned unheard; which is against the rights of natural justice.
- (j) This Application has been brought without undue delay.
- (k) The Claimant/Respondent will not suffer any prejudice whatsoever if the Orders sought herein are allowed.

DATED at NAIROBI this 28th day of February, 2022.



MUCHUI-MWENDWA & CO.
ADVOCATES FOR THE RESPONDENT/APPLICANT

DRAWN AND FILED BY:

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“If any party served does not appear at the time and place above mentioned, Orders will be issued by the Court his absence notwithstanding”.

REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT NAIROBI
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SCCCOMM NO. E1016 OF 2021

CAROLINE GICHOHI ----- CLAIMANT/RESPONDENT

VERSUS

LESEDI HOMES LIMITED ----- RESPONDENT/APPLICANT

SUPPORTING AFFIDAVIT

I GEOFFREY K. KIRAGU of P.O. BOX 4772-01000, **THIKA** in the Republic of Kenya do hereby make oath and state as follows:

1. **THAT** I am the Director of the Respondent/Applicant herein thus duly and competent authorized to defend this suit to swear this Affidavit.
2. **THAT** the general pleadings in this matter have been explained to me by my Advocates coming on record; which advice and explanation I verily believe is true and thus I have the following to state:
3. **THAT** Default Interlocutory Judgment was entered against the Respondent/Applicant on **27th January, 2022**.
4. **THAT** however, the Mention Notice for the said date on this matter was never served on the Respondent/Applicant thus it was unaware of the said date.
5. **THAT** indeed, the Parties had commenced attempts to have the matter settled out-of-Court in December, 2021 and no impasse had been communicated by Advocate for the Claimant/Respondent to warrant continued prosecution of this case.
6. **THAT** the said attempts were through the Advocates on record for the Respondent/Applicant thus the Advocate for the Claimant/Respondent was fully aware of the former's hand in the out-of-Court settlement negotiations.
7. **THAT** most unfortunately, the Advocate for the Claimant/Respondent failed and/or omitted to bring it to this Honourable Court's attention that the Parties were engaged in attempted out-of-Court settlement thus to give the matter another Mention date as opposed to having the Court Rule on it in its first Mention.

8. **THAT** therefore, the entry of the default judgement puts the Respondent/Applicant at a greatly exposed position since the lack of entry of appearance was only due to the aforementioned attempts to settle the matter amicably which it endeavoured with utmost good faith.
9. **THAT** the Respondent/Applicant is ready and willing to pay the Claimant/Respondent **as per the terms of the contract** which is less the default interest of 10% of the Purchase Price (**KShs. 275,000/=**) since it is the Claimant/Respondent (and not the Respondent/Applicant) who breached the Agreement for rescinding **before the Completion Date. (Annexed herewith and marked "GKK-1" is the Letter of Offer dated 3rd July, 2021)**
10. **THAT** thus, the said figure is contrary to the prayers for which the Respondent/Applicant is humbly submitting to this Court for interpretation.
11. **THAT** indeed, the instant house is actually nearing completion **in line with the Completion date of 5th July, 2022** outlined in the aforesaid Letter of Offer. **(Annexed herewith and marked "GKK-2(a-f)" are the photographs evidencing the stage of construction)**
12. **THAT** it is therefore clear that the Claimant/Respondent came to this Honourable Court with *dirty hands* and is thus undeserving of any Orders granted in her favour.
13. **THAT** the Respondent/Applicant has a concrete Defence and Counterclaim that raises *bona fide* triable issues and failure to admit the said Defence and Counterclaim will be tantamount to condemning the Respondent/Applicant unheard.
14. **THAT** therefore, the Respondent/Applicant is desirous of defending the suit herein and indeed having its Counterclaim adjudicated upon in its efforts to have justice dispensed accordingly owing to the uncommunicated failure of the out-of-Court settlement. **(Annexed herewith and marked "GKK-3 is the Draft Defence dated 9th February, 2022)**
15. **THAT** it is in the interest of justice that this Honourable Court allows this Application and the draft Statement of Defence and Counterclaim dated **9th February, 2022** filed herewith be deemed as duly filed.

16. **THAT** since default interlocutory judgement has been entered herein and this suit marked as closed therefore execution is imminent thus making this Application of utmost urgency.
17. **THAT** unless this Honourable Court sets aside the default interlocutory judgment, the Respondent/Applicant will be condemned unheard; which is against the rights of natural justice.
18. **THAT** I am advised that he who seeks equity must do equity and must come with clean hands which is why upon receipt of the pleadings and initial Mention date of **10th December, 2022 (served with the pleadings)** the Respondent/Applicant initiated out-of-Court settlement negotiations only for the Claimant/Respondent to continue with prosecution hereof without communicating that the proposal was not acceptable to her. ***(Annexed herewith and marked “GKK-4 is a copy of the Pleadings and Mention Notice for 10th December, 2021)***
19. **THAT** moreso, when the matter was not listed before Hon. S.G.Gitonga (Mrs.) (SRM), the Respondent/Applicant waited for service of a fresh date which service was never effected. ***(Annexed herewith and marked “GKK-5 is a copy of the Causelist for 10th December, 2021 for the stated Judicial Officer)***
20. **THAT** indeed, the Respondent/Applicant while not admitting any breach on its part, is not opposed to refunding the Claimant/Respondent herein but seeks to do so as per the terms of the Letter of Offer produced by the Claimant/Respondent as evidence of the contract.
21. I am advised that equity aides the vigilant thus this Application has been brought without undue delay.
22. **THAT** the Claimant/Respondent will not suffer any prejudice whatsoever if the Orders sought herein are allowed.

23. **THAT** all that is deponed herein is true to the best of my knowledge,
information and belief.

Sworn at NAIROBI

This 16th day of February, 2022 }

By the said

GEOFREY K. KIRAGU

}

}

}

}



DEPONENT

BEFORE ME



}

COMMISSIONER FOR OATHS

}

"GKK-2(a-f)"













REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT OF KENYA AT MILIMANI-NAIROBI
CLAIM NO. E1016 OF 2021

CAROLINE GICHOHI ----- CLAIMANT

VERSUS

LESEDI HOMES LIMITED ----- RESPONDENT

RESPONSE TO STATEMENT OF CLAIM

1. Claimant's Personal Details

Name: CAROLINE GICHOHI	Postal Address: 42645-00100, NAIROBI
Physical Address: EPIC RIDGE ESTATE	Telephone Contact: 0721425038
Email Address: cmgich@yahoo.com	Nature of Business: Humanitarian Worker
Location/Sub/Village: Mwimuto Kiambu	

2. Respondent's Personal Details

Name: LESEDI HOMES LIMITED	Postal Address: 43844-00100, NAIROBI
Physical Address: WEATPARK SUITES, 2ND FLOOR	Telephone Contact: 0728444222
Email Address: info@lesedihomes.com	Nature of Business: REAL ESTATE
Location/Sub/Village: PARKLANDS	

3. Response to Statement of Claim

In response to the Statement of Claim dated the 30th day of **November, 2022** the Respondent states as follows: (Please tick where appropriate)

- ☐ The Respondent does not owe the Claimant any money.
- × **The Respondent owes the Claimant only a portion of the amount claimed in the Statement of Claim amounting to Kshs. 575,000/=**
- ☐ The Respondent admits the whole of the Claimants claim.
- ☐ The Respondent has paid to the Claimant all the sum claimed in the Statement of Claim.
- × **It is the Claimant who owes the Respondent a sum of Kshs 275,000/= on account of terminating the Agreement for Sale before the Completion period had lapsed.**
- ☐ If the response is in denial of the whole or part of the claim. Give reasons why the claim is denied (explain briefly)

4. In addition to the Respondent's response in paragraph three above, the Respondent state's that this claim (Please tick where appropriate)

- ☐ Is filed in the right Court
- ☐ Is filed in the wrong Court and should be transferred to the Small Claims Court at

5. Counterclaim Without prejudice to the Respondent's response in paragraphs three and four, the Respondent Counterclaims against the Claimant the sum of Kshs 275,000/= on account of terminating the Agreement for Sale before the Completion period had lapsed.

6. Set-Off While admitting the Claimant's claim in the sum of Kshs , the Respondent states they are entitled to a Set-Off in the sum of Kshs on account of (state the amount sought to be set-off and the reasons for the set-off)

7. Claim against Third Party The Respondent denies the Claimants claim and states that the person named below ("the Third Party") is liable to the Claimant on the grounds set out in the attached Third Party Notice.

Name of Third Party:

Postal Address:

Telephone Contact:

Email Address:

Location/Sub/Village:

8. Remedy/ Relief Sought

The Respondent requests the Court to:

☐ Dismiss the Claimants claim with costs to the Respondents

× **Enter Judgment in favour of the Claimant against the Respondent in the sum of Kshs. 575,000/=**

☐ Enter judgment in favour of the Respondent against the Claimant on the Counterclaim/Set off in the sum of Kshs

☐ Enter judgment in favour of the Claimant against the Third-party in the sum of Kshs

Declaration I declare that the information given above is true

Name of Respondent: **LESEDI HOMES LIMITED**

Signature of Respondent:



Dated this 16th day of February, 2022

Acknowledge of Service

I acknowledge service of this Response to Statement of Claim delivered to me, with evidential documents attached, on

Name of Claimant:

Signature of Claimant:

For Official Use Only This Response to Statement of Claim was filed on the day of 20
Signed (Registrar)