



Supreme Court clarifies the requirements for filing a civil defence vis-a-vis applications for default judgments

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The Supreme Court has had the opportunity to interpret the provisions of Order 8 Rules 1(2) and 19, and Order 9 rule 1(1). In doing so, the Court has finally cleared the ambiguity created by the all too often asked question of whether a plaintiff is entitled to a default judgment where the defendant has filed their written statement of defence within the prescribed fifteen days but has not served the same onto the plaintiff within that time. Put in a different way, must a written statement of defence filed and SERVED within the prescribed time of fifteen days.

The Supreme Court held that indeed, a written statement of defence must be filed and served within fifteen days. However, the Court has also created an exception to this rule. It did so by holding that if a written statement of defence is filed within fifteen days and for unexplainable delays on the part of the court, it is not signed and sealed to enable it to be served on the plaintiff within the fifteen days, then the defendant is allowed to serve the same outside the fifteen days. It goes on to hold that the Court (High Court or Magistrate's Court) may not allow a default judgment to be issued in such circumstances. The basis for the use of the word "may" and not "shall" appears to be premised on the fact that the Court went on to hold that the unexplainable delays on the part of the court must be subject to proof and the burden to prove such is on the defendant.

It would therefore appear that the court has now introduced the requirement for a plaintiff to file a formal application, as opposed to the ordinary application by letter, seeking a default judgment in case a written statement of defence was filed within the fifteen days but the said days expired before it was served. This is because the defendant now has the right to respond by way of explanation why there was non-service and such explanation must relate to the conduct of the Court in occasioning such delay. However, the above discussion is not applicable where a defence is not filed within fifteen days.

The Court also noted that it is not the duty of the plaintiff or their counsel to access a copy of the defence, once filed, from the court record as had earlier been held by the courts below to be "the practice". The Court held that such a practice contravened the clear provisions of Order 8 rule 19 which places the burden upon the defendant to serve their defence on the plaintiff.

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