



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CIVIL CASE NO. 251 OF 2010**

LAWRENCE SAMPEPE.....1<sup>ST</sup> PLAINTIFF  
OLTETIA KASURA.....2<sup>ND</sup> PLAINTIFF  
JOHAH MAGIROI.....3<sup>RD</sup> PLAINTIFF  
KANAIYO PASTOR.....4<sup>TH</sup> PLAINTIFF  
CYRUS LONKUSHU.....5<sup>TH</sup> PLAINTIFF  
BENSON ROTIKEN.....6<sup>TH</sup> PLAINTIFF  
WILLIAM KASEYIE.....7<sup>TH</sup> PLAINTIFF  
MONICAH KASURA.....8<sup>TH</sup> PLAINTIFF  
JENNIFFER WAUAPARI.....9<sup>TH</sup> PLAINTIFF  
JACKSON TIAMBATI.....10<sup>TH</sup> PLAINTIFF  
JULIUS TANUI.....11<sup>TH</sup> PLAINTIFF  
DAVID NAISHO.....12<sup>TH</sup> PLAINTIFF  
DICKSON SEMPELE.....13<sup>TH</sup> PLAINTIFF  
JCKSON KENANA.....14<sup>TH</sup> PLAINTIFF  
ALICE PARMUYA.....15<sup>TH</sup> PLAINTIFF  
SOSPEHINE ALARUS.....16<sup>TH</sup> PLAINTIFF  
RAHAB KENANA.....17<sup>TH</sup> PLAINTIFF  
THOMAS WUAPARI.....18<sup>TH</sup> PLAINTIFF  
KENNEDY KOOL.....19<sup>TH</sup> PLAINTIFF  
MARTIN KOONYO.....20<sup>TH</sup> PLAINTIFF  
-VERSUS-  
MALTAURO SPA.....1<sup>ST</sup> DEFENDANT

GUFF CONSULTANTS.....2<sup>ND</sup> DEFENDANT

NATIONAL ENVIRONMENT

MANAGEMENT AUTHORITY.....3<sup>RD</sup> DEFENDANT

**RULING**

1. This suit was filed on the 6<sup>th</sup> October 2010 together with a chamber summons application seeking a temporary injunction against the defendants compelling them to be subjected to Environmental Audit Impact Assessment pending hearing and determination of the suit.

The application was heard – *ex parte* – (J. Emukule) and a ruling delivered on the 19<sup>th</sup> October 2010. I have perused the proceedings and it does not appear like interparties hearing was ever done.

I have seen summons to enter appearance drawn and signed by the Deputy Registrar of the court on the 6<sup>th</sup> October 2010. They are in the court file.

2. By its application dated 12<sup>th</sup> November 2014, the 1<sup>st</sup> Defendant moved the court under provisions of Order 5 Rule 1(1) and Order 7 rule 1 Civil Procedure Rules among others, seeking an order that this suit be struck out for failure by the plaintiffs to extract and serve summons upon the defendants since filing of the suit.

3. The Respondents/plaintiffs though served with the application have not responded by way of replying affidavits or grounds of opposition.

It is trite that non service of summons to enter appearance to the defendants renders a suit still-borne. It no doubt prejudices the sued parties by unexplained delay. A summons is an important document and without it, a suit cannot proceed. It governs the timetable of pleading and subsequent progress of a suit. See **Order 5 Civil Procedure Rules**.

4. The court can move *suo moto* to strike out a suit when it is satisfied that no summons are served upon the defendants. -

**Anthony Karanja Wechuli Odwisa -vs- Alfred Munyanganyi (2006) e KLR.**

5. Having been satisfied that the plaintiffs have failed to take out and serve summons upon the defendants, **I proceed to strike out the plaintiffs suit filed on the 6<sup>th</sup> October 2010 with 50% scale fees to the defendants.**

**Dated, signed and delivered this 29<sup>th</sup> day of November 2018.**

**J.N. MULWA**

**JUDGE**