



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 362 OF 2009

1. RICHARD WAHABA WATHUU
2. PETER THUO WAHABA (*ADMINISTRATORS AND LEGAL REPRESENTATIVES OF THE ESTATE OF FAITH MUKONYO MUTIO(DECEASED)*).....
PLAINTIFFS/APPLICANTS

VERSUS

1. FRANCIS KARAYA MAINGI
2. LYDIA WAMBUI MAINGI (*ADMINISTRATORS OF THE ESTATE OF WILLY MAINGI KARAYA (DECEASED)*)
4. MULTIPLE HAULIERS (E.A.) LTD.
5. VINCENT KARIUKI DEFENDANTS/RESPONDENTS

R U L I N G

1. The application dated 8/6/2012 seeks orders that:-
 1. **“THAT** the Honourable Court be pleased to renew the summons to enter appearance dated 11th December 2009 issued against the 4th defendant herein.
 2. **THAT** the Honourable Court be pleased to extend the validity of summons to enter appearance issued to the 4th Defendant herein and dated 11th December, 2009 for a further period of 12 months under Order 5 Rule 2 (2).
3. **THAT** the costs of this application be provided for.”
2. The application is predicated on **section 3A** of the **Civil Procedure Act Cap 21 Laws of Kenya, Order 5 Rule 2 (2) and (5) Order 51 Rule 1** of the **Civil Procedure Rules** and all other enabling provisions of the law.
3. According to the affidavit in support, it was difficult to establish the whereabouts of the 4th Defendant to effect service on him and the summons expired during the period that the investigations were being carried out to establish his whereabouts. The Applicants state that they have now established the 4th Defendants whereabouts and are able to effect service on him.
4. Although the 1st and 2nd Defendants were served, they did not file any papers in opposition to the application neither attend court on the hearing date. The 3rd Defendant’s counsel appeared in court on the hearing date and was not objected to the application.
5. The application was canvassed by way of written submissions which I have duly considered.
6. It is noted that the initial summons issued herein have since lapsed. No application was made to renew the summons before the lapse of the first twelve months. However, my reading of **Order 5** shows that it does not bar re-issuance or enlargement of time within which to serve the summons. I agree with the Applicants’ counsel that the provisions of **section 1A, 3A** and **section 95** of the **Civil Procedure Act** and **section 5** of the **Interpretation and General Provisions Act** and

Article 159 (1) of the Constitution come to the complainants' aid. This court is inclined to allow the application and administer justice without undue regard to technicalities of procedure.

The application is allowed with costs in cause.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 28th day of April 2015

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B. THURANIRA JADEN

JUDGE