



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC NO. 409 OF 2012

STEPHEN NJUGUNA MWENDA.....PLAINTIFF/RESPONDENT

VERSUS

PETER MWICHIGI MWANGI.....DEFENDANT/RESPONDENT

RULING:

This suit was filed in Court on 13/7/2012 and a Notice of Motion dated 12/7/2012 accompanied the Plaintiff. The Notice of Motion was fixed for hearing on several occasions but it did not take off. The suit was allegedly fixed for hearing of the main suit on 12/6/2013.

On 12/6/2013, **Mr Kahuthu** informed the court this suit has abated as summons have not been taken.

He also submitted that, **Order 5 rule 1(6)** is couched in mandatory terms and so the suit has abated. Mr Nguring'a on the other hand admitted that Summons have not been taken out. He submitted that the Environment and Land Court Acts provides that, the Court should not be seriously bound by **Civil Procedure Rules** while deciding cases. He further submitted that, he was not issued with summons by the courts registry and he should not be penalized for that.

I have considered the rival submissions and the provisions of **Order 5 Rule 1 (6)** which provides that:-

*“Every summons, except where the Court is to effect service **shall** be collected for service within thirty days of issue of notification which is later, failing which the suit **shall** abate”*

The above provision is indeed couched in mandatory terms. The Plaintiff did not collect the Summons within a period of 30 days of issue and so the Summons have not been served upon the defendant. For that reason, this suit **stands abated**. It is therefore the Court's findings that, the Plaintiff herein did not collect and serve upon the Defendant the Summons within the stipulated time.

This suit therefore, has abated and the same stands dismissed.

Dated, Signed and delivered this 21ST day of June, 2013.

L.N. GACHERU

In the Presence of:-

..... **For the Plaintiff/ Applicant**

.....**For the Defendant/ Respondent**

Anne :Court Clerk

L.N. GACHERU