

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO. 415 OF 2010

CHARLES NJUGUNA MWITA.....PLAINTIFF

VERSUS

- 1. JOHN NDUNGU MAINA**
- 2. EDWARD CHEBA NGANGA.....DEFENDANTS**

RULING

1. Under **Order 5, Rule 2(2)** of the **Civil Procedure Rules, 2010** (the **Rules**), where a summons have not been served on a defendant, the court may extend the validity of the summons from time to time if satisfied that it is just so to do. An application for an order for extension of the validity of summons must be accompanied by an affidavit setting out the attempts made at service and the results of such attempts. See sub-rule (5) of the same Rule.

2. In this present suit the original summons were on 16th January 2012 extended by 12 months from 3rd September 2011. The extended summons subsequently expired on 2nd September 2012 without service upon the Defendant. Further extension has been sought by **notice of motion dated 13th June 2013**. It has not been explained why there has been such delay in applying for further extension of validity.

3. I have read the supporting affidavit in which the attempts at service and the results thereof have been stated. I am satisfied that it is just to further extend the validity of the summons herein. I will therefore grant the application and extend the validity of the summons by 12 months from 3rd September 2012 to 2nd September 2013. Costs of the application shall be in the cause.

DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF JULY 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 26TH DAY OF JULY 2013