



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL CASE NO. 724 OF 2006**

**VIRGIN SPIRIT TRAVEL LIMITED..... PLAINTIFF**

**VERSUS**

**MAASAI MARA KOIYAKI LEMEK WILDLIFE TRUST ..... DEFENDANT**

**R U L I N G**

**Order 5, rule 1(1), (2), (5) and (6) of the Civil Procedure Rules, 2010 (the new Rules) provide as follows: -**

**“(1) When a suit has been filed a summons shall issue to the defendant ordering him to appear within the time specified therein.**

**(2) Every summons shall be signed by the judge or an officer appointed by the judge and shall be sealed with the seal of the court without delay, and in any event not more than thirty days from the date of filing suit.**

.....

**(5) Every summons shall be prepared by the plaintiff or his advocate and filed with the plaint to be signed in accordance with subrule (2) of this rule.**

**(6) Every summons, except where the court is to effect service, shall be collected for service within thirty days of issue or notification, whichever is later, failing which the suit shall abate.”**

The Civil Procedure Rules, 2010 came into operation towards the end of that year, replacing the old Civil Procedure Rules (the old Rules).

This present suit was filed on 4<sup>th</sup> July 2005. It may thus be said that the above quoted rules do not apply to it. But even under the old Rules, it was still a requirement that every summons be prepared by the Plaintiff or his advocate and be filed with the plaint, to be signed and issued by the court. See **Order IV, rule 3(5)** of the old Rules.

It is conceded by the Plaintiff that when the plaint herein was filed no summons were prepared and filed together with it nor issued. None has been prepared or issued since.

Under **Order V, rule 1** of the old Rules (**Order 5, rule 2** of the new Rules) the validity of summons to enter appearance is 12 months, but there is provision for extension of that validity.

Summons to enter appearance when served upon the defendant is what brings such defendant into the suit, thus giving the court jurisdiction to substantively deal with the suit. Where summons are neither issued nor served upon a defendant for 12 months since institution of the suit, nor extended, under the old Rules the suit must of necessity abate. If the issue of abatement of suit for failure to issue or serve summons was not clear enough under the old Rules, it was made clear in the new Rules.

Under old rule 5(1) and (6) of the new Rules, every summons, except where the court is to effect service, must be collected for service within 30 days of issue or notification, whichever is later, failing which the suit shall abate. We have already seen that under subrule 5 of the same Rule every summons must be prepared by the plaintiff or his advocate and filed with the plaint. The same would then be signed by the judge or by an officer appointed by the judge and sealed with the seal of the court without delay, and in any event within 30 days from the date of filing suit (rule (2)).

Six and a half years down the line from the date of filing suit, the Plaintiff has never bothered to prepare summons to enter appearance or have them issued. This suit therefore abated at the very least, after expiry of 12 months after the date of filing the plaint.

The suit having thus abated, the Plaintiff cannot now apply to add other persons as defendants in the suit or to amend the plaint (**chamber summons dated 14<sup>th</sup> July 2008**). There is no longer any suit in which other persons can be joined or plaint amended. The suit abated long ago.

The application is misconceived. It is hereby dismissed with costs.

It is so ordered.

**DATED AT NAIROBI THIS 1<sup>ST</sup> DAY OF FEBRUARY 2012**

**H.P.G. WAWERU**  
**JUDGE**

**DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF FEBRUARY 2012**