



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 318 OF 2010

NICKSON NADZAO NGALA.....PLAINTIFF

VERSUS

1. ISSA RASMIYYAH

2. HACKBENG INVESTMENTS CO. LTD.

3. ESTHER WANJIKU.....DEFENDANTS

RULING

Coram: Mwera, J.
Kenzi for Plaintiff/Applicant
N/A for Defendants

Court Clerk Furaha

By a notice of motion dated 28th October, 2011 brought under O. 50 r. 5, O. 5 r. 2 of the C.P.R. and ss. 1A, 1B of C.P.A. the applicant prayed:

i) that time be enlarged for the validity of summons herein in respect of the 2nd and 3rd defendants issued on 8th September, 2008.

It was stated in the grounds that the cause of action herein arose from a road accident. The 1st defendant was duly served with summons but the process server had not been successful in effecting the same on the other two defendants since 8th September, 2011.

Mr. Kenzi for the applicant swore a supporting affidavit stating, *inter alia*:

“6. That since the summons were (sic) taken out the process server SAMMY M. MUTWANYAA has tried in vain to trace the 2nd and 3rd defendant (sic) to effect personal service.”

There was an affidavit sworn by the said Sammy Mutwanyaa, the process server that he tried to serve the two defendants with summonses to enter appearance without success.

Directed to submit, Mr. Kenzi argued that O. 50 r. 5 C.P.R. gave this court power to enlarge time within which a certain act was to be done but which time expired without the stated act being done. He added

that attempts by the process server had been unsuccessful to effect service on 19th October, 2010. Although he had the postal address of the two defendants, P. O. Box 78686-00507 Nairobi, the process server apparently inquired physically of their place of business intending to effect personal service, all to no avail. If it may be observed at this point, it is not clear why the postal address was not used especially to serve the 2nd defendant, a corporation through pre-paid post. That defendant appeared to have the postal address as per the search carried out at the registrar of motor vehicles. And then only one attempt to serve was made before the time of validity ran out.

It is given in the law that a party should serve summons to enter appearance within twelve (12) months and during that time of validity extension can be made which may extend beyond that period on application to the court with reasons stated. If that is not done the court may dismiss suit without notice after twenty four (24) months.

In the present case, the orders sought are granted for three (3) months. In the event of non-service by any means provided for by law, the applicant should not expect the court to grant it more time at all.

Dated, signed and delivered this 12th day of March, 2012.

J. W. MWERA

JUDGE