



**Musomi v Comet & 4 others (Environment & Land Case
19 of 2019) [2022] KEELC 2763 (KLR) (13 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2763 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 19 OF 2019**

**TW MURIGI, J
JULY 13, 2022**

BETWEEN

MAUREEN NDUNGE MUSOMI PLAINTIFF

AND

ANNE WAYUA COMET 1ST DEFENDANT

JANE MBITHE COMET 2ND DEFENDANT

CHIEF LANDS REGISTRAR 3RD DEFENDANT

LAND REGISTRAR, MAKUENI COUNTY 4TH DEFENDANT

ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. Before me is a Notice of Motion application dated 28th March, 2022 brought pursuant to the provisions of Article 50 (1) of *the Constitution*, Sections 1, 1A, 3 and 3A of the *Civil Procedure Act*, Orders 5 Rule 2(2) and 50 Rule 6 of the *Civil Procedure Rules* 2010 where the Plaintiff/Applicant is seeking for the following orders: -
 - 1) Spent.
 - 2) That the Court be pleased to extend the validity of summons to enter appearance issued herein on 21st March, 2019.
 - 3) That the summons to enter appearance be renewed and their validity thereof extended for twelve months from the date of the Order.
 - 4) That this Honourable Court be pleased to set this matter down for hearing.
 - 5) That costs of this application be provided for.



2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Ivan Kipkoech Rono Advocate, sworn on 28th March, 2022.
3. A summary of the grounds and the averments is that despite concerted efforts by the Ministry of Foreign Affairs through the Kenyan Embassy and the Permanent Mission in New York, the Plaintiff/Applicant has been unable to effect service of summons to enter appearance upon the 1st and 2nd Defendants/Respondents, who reside in New Jersey, USA.
4. The Applicant contends that the Permanent Mission of the Republic of Kenya in New York engaged the services of “We Serve Law” for the purposes of effecting service of Court process upon the 1st and 2nd Defendants. That the process servers have attempted five times without success to effect service upon the 1st and 2nd Defendants. The Applicant annexed Exhibit “IKR3” to demonstrate the failed attempts by “We Serve Law”.
5. The Applicant further averred that the email addresses of the 1st and 2nd Defendants are within the knowledge of the Plaintiff and thus in the interest of natural justice the application should be allowed.
6. The 3rd, 4th and 5th Defendants/Respondents did not oppose the application.

Analysis and Determination

7. Having considered the application, the grounds and the affidavit in support thereof, I find that the issue for determination is whether the Plaintiff has satisfied the criteria for the grant of an order to enlarge time for service of summons to enter appearance.
8. The Plaintiff seeks an extension of the validity of summons to enter appearance to enable him serve the 1st and 2nd Defendants. Order 5 of the Civil Procedures Rules is the applicable law governing the issuance of summons and extension of the same. Order 5 Rule 2(2) provides as follows;

2(2) “Where a summons has not been served on a defendant the court may extend the validity of the summons from time to time if it is satisfied it is just to do so.”

9. It is clear from the above provisions of the law that the Court can exercise its discretion to extend the validity of summons from time to time when there are justified reasons to do so.
10. Order 50 Rule 6 of the [Civil Procedure Rules](#) provides as follows:

“Where a limited time has been fixed for doing any act or taking any proceedings under these rules, or by summary notice or by order of the court, the court shall have such power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.”

11. In the case of [Trident Insurance Co. Vs Underwriting Services & Insurance Brokers Ltd.](#) (2017) eKLR the Court held that;

“In principle therefore, the Court has discretion to either extend the validity of summons or to order for the re-issue of summons even if the original summon had already expired. But when the court was asked to either extend the validity of summons or to order the re-issue of summons, it is imperative that the court exercises its discretion in a judicious manner.”



12. Similarly, in the case of *Letsbego Kenya Limited Vs Timothy Kimenyi Mungathia* [2021] eKLR the Court held that;

“..... that a party can apply for enlargement of time, if the original duration given has already expired. In the case of summons, I do not agree with the trial court, that one must apply for their extension only when the summons are still valid. There is nothing in the law that bars the court from extending the validity of summons because such application is made after the original summons have expired. The court therefore has discretion to consider an application for extension of validity of summons even where the said summons have expired.”

13. The record shows that the summons to enter appearance were issued on 21st of March 2019. The Applicant in his supporting affidavit stated the challenges encountered by the Plaintiff in his attempts to effect service upon the 1st and 2nd Defendants. The ultimate goal of this Court is to determine the dispute between the parties. That cannot be achieved unless the 1st and 2nd Defendants have been notified of the existence of the case. The Defendants shall also have an opportunity to defend themselves. That can only be achieved by having the expired summons being given life by an order of re-issue. In so finding, I am persuaded by the holding in the above cases and the provisions of Order 5 Rule 2(2) of the *Civil Procedure Rules*.

14. I find that the Plaintiff has given sufficient reasons why the original summons were not served upon the 1st and 2nd Defendants on time.

15. In the end, I will in the interest of justice allow the application dated 28th of March 2022 in the following terms: -

- 1) The Plaintiff shall prepare the summons within 7 days and present the same to Court for the purposes of being signed by the Deputy Registrar.
- 2) The summons must be collected and service effected within 30 days from the date the summons shall have been signed.

.....
HON. T. MURIGI

JUDGE

RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 13th DAY OF JULY, 2022.

IN THE PRESENCE OF: -

Court Assistant – Mr. Kwemboi

Macharia holding brief for Miencha for the Plaintiff/Applicant

