



REPUBLIC OF KENYA



KENYA LAW

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**Paksa Construction Limited v Apex Apartments Limited (Civil Case E125 of 2021)
[2025] KEHC 10864 (KLR) (Commercial and Tax) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10864 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
COMMERCIAL AND TAX
CIVIL CASE E125 OF 2021**

BK NJOROGE, J

JULY 24, 2025

BETWEEN

PAKSA CONSTRUCTION LIMITED PLAINTIFF

AND

APEX APARTMENTS LIMITED DEFENDANT

RULING

1. This ruling relates to the Notice of Motion dated 21st January 2025, filed by the Plaintiff/Applicant pursuant to Sections 1A, 1B, 3A, and 14 of the *Civil Procedure Act*, as well as Order 5 Rules 1 and 2, and Order 51 of the Civil Procedure Rules. The application seeks the following orders:
 - a. Spent.
 - b. THAT this Honourable Court do issue orders extending validity of the summons to the Defendant.
 - c. THAT this Honourable Court do re-issue summons to the Defendant.
 - d. THAT the costs of this Application be in the cause.
2. The Application is supported by the affidavit of Njoroge Wachira, an Advocate of the High Court of Kenya, practicing under the firm name Messrs. Njoroge Wachira & Company Advocates, who is duly instructed by the Plaintiff, Paksa Construction Limited, in this matter. The Affidavit was sworn on 21st January 2025 in support of the Motion.

Issues For Determination

3. Having carefully considered the application, the grounds upon which it is premised, and the supporting affidavit, the key issue for determination is;



- a. Whether the Plaintiff has established sufficient basis for the grant of an order enlarging time for service of summons to enter appearance.

Analysis

4. The Plaintiff seeks an extension of the validity of the summons to enter appearance in order to facilitate service upon the Defendant. The applicable legal framework governing issuance and extension of summons is found under Order 5 of the Civil Procedure Rules. Specifically, Order 5 Rule 2(2) provides:

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.

5. The language of the above provision is permissive and vests the Court with discretion to extend the validity of summons where it is just and equitable to do so. The exercise of this discretion must, however, be informed by the circumstances of the case and the conduct of the parties.
6. Further guidance is found in Order 50 Rule 6 of the Civil Procedure Rules, which stipulates:

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.

7. The judicial discretion to extend or re-issue expired summons has been affirmed by the courts in several decisions. In *Trident Insurance Co. Ltd v Underwriting Services & Insurance Brokers Ltd* [2017] eKLR— a position subsequently endorsed in *Jonathan Kaposhi v Colleta Mbatha Maweu & 4 others* [2019] KEELC 4090 (KLR) and *Fina Bank Limited v Satyam Industries Kenya Limited & 4 others* [2015] KEHC 7227 (KLR)— the Court held:

“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.”

8. Similarly, in *Letshego Kenya Limited v Timothy Kimenyi Mungathia* [2021] KEHC 5380 (KLR), the Court emphasized 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.”

9. The record shows that the Plaintiff filed this suit seeking payment for construction services rendered to the Defendant. Pursuant to that claim, the Plaintiff took out Summons to Enter Appearance, which were issued on 25th July 2023. The process server subsequently effected service of the summons and pleadings upon the Defendant, as attested in the affidavit of service dated 6th December 2023. Despite



that service, the Defendant did not enter appearance within the prescribed timelines under the Civil Procedure Rules. Following the Defendant's failure to enter appearance, the Plaintiff filed a request for entry of judgment dated 6th December 2023, relying on the duly sworn affidavit of service. However, the Deputy Registrar declined to enter default judgment against the Defendant. Consequently, the Plaintiff sought and obtained an order for substituted service through an application dated 13th May 2024. The application was allowed on 8th July 2024 and the order was formally extracted on 19th July 2024.

10. The Plaintiff had previously made a bona fide effort to serve the Defendant at the last known address, but the Court declined to enter judgment in default. The Plaintiff now seeks to pursue substituted service as permitted under Order 5 Rule 17 of the Civil Procedure Rules. Further, the slight delay in bringing the present application has been explained. It arose due to the indisposition of the Plaintiff's counsel, which temporarily prevented timely filing of this application. The Plaintiff has acted promptly once circumstances allowed and now seeks the Court's discretion to extend the validity of the summons in the interest of justice. This Court's primary objective is to adjudicate disputes on their merits, and that cannot be achieved unless the Defendant is duly notified of the proceedings. The Defendant must be afforded the opportunity to respond and defend against the claim. That objective can only be met if the expired summons are revived through an order of re-issuance.
11. In light of the foregoing statutory and judicial guidance, it is evident that this Court retains discretion to extend or re-issue expired summons where sufficient cause is shown. The present application has been made in good faith, the delay has been adequately explained, and no prejudice has been demonstrated on the part of the Defendant. Accordingly, and in reliance on Order 5 Rules 1 and 2 of the Civil Procedure Rules, and being persuaded by the authorities cited, the Court is satisfied that the Plaintiff has established a proper basis for the extension sought.

Determination

12. The Plaintiff's application by way of a Notice of Motion dated 21st January 2025 is allowed on the following terms;
 - a. The Summons to Enter Appearance be and are hereby extended for twelve (12) months from the date hereof to enable the Plaintiff/Applicant to effect service upon the Defendant/Respondent.
 - b. The Plaintiff/Applicant be and is hereby granted leave to serve the Defendant/Respondent by way of substituted service in accordance with the applicable provisions of the Civil Procedure Rules.
 - c. The costs of the Application shall be in the cause.
13. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JULY, 2025

NJOROGE BENJAMIN K.

JUDGE

In the presence of

Mr. Adano for the Plaintiffs/Applicants

Mr. Luyai Court Assistant

