



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 667 OF 2013

JOHN CHIGOYA NJOGU.....1ST PLAINTIFF/APPLICANT

ROSE WAIRIMU CHIGOYA.....2ND PLAINTIFF/APPLICANT

VERSUS

JAMES FREDRICK MURIUKI.....1ST DEFENDANT/RESPONDENT

AGNES WANJIRU MURIUKI.....2ND DEFENDANT/RESPONDENT

JOHN MURIUKI MIGWIH.....3RD DEFENDANT/RESPONDENT

PAUL MAINA MURIUKI.....4TH DEFENDANT/RESPONDENT

RULING

1. By an Ex-Parte Notice of Motion application dated 30th April 2021 and supported by an affidavit of even date, the Applicants herein approached the court seeking the following orders:

- i. That the Honourable Court be pleased to issue fresh summons to enter appearance against the 1st, 2nd and 4th Defendants;**
- ii. That leave be granted to the Plaintiffs to effect service of fresh summons upon the 1st, 2nd and 4th Defendants by way of substituted service through advertisement in the Daily Nation Newspaper.**

2. The Applicant's prayers are grounded on the premises set out in the 1st Applicant's supporting affidavit:

- a. That the Plaintiffs filed this suit on 23rd May 2012 through an originating summons dated 10th May 2021;
- b. That the said documents were served upon all Defendants but only the 3rd Defendant entered appearance;
- c. That after perusing the affidavit of service sworn on 16th February 2016 by a process server by the name Peter Mwai Wanjau, the court directed that the 1st, 2nd and 4th Defendants be served with fresh summons;
- d. That the summons issued in the matter on 23rd May 2012 expired and efforts to trace the 1st, 2nd and 4th Defendants have been futile;
- e. That issuance of fresh summons to enter appearance against the 1st, 2nd and 4th Defendants is imperative for the Plaintiffs/Applicants have a legitimate claim against the Defendants/Respondents;
- f. That the whereabouts of the 1st, 2nd and 4th Defendants are unknown despite all reasonable steps made to trace them since they do not reside on the Suit Land;
- g. That no prejudice will be occasioned to any of the parties if the court allows the prayers sought;

h. That it is in the interest of justice that the application be allowed.

3. The Applicant's application is opposed. Counsel for the 3rd Defendant informed the court that the 3rd Defendant passed away in 2019 and that they had not received instructions since then. On 2nd June 2021, the Applicant was directed to file and serve the Respondents with written submissions within 14 days thereof. No submissions were filed as at the time of writing this ruling.

4. The court has considered the Notice of Motion application and the supporting affidavit. It is noted that the Applicants had previously moved to court seeking extension of summons on the same grounds, which application was dismissed by this court on 12th February 2021 on the basis that the summons had expired and could therefore not be extended. The Applicants have now approached court seeking for leave to re-issue the summons. Whereas **Order 5 Rule 2 of the Civil Procedure Rules, 2010** provide for the extension of the validity of summons, there is no provision for Re-issuance of fresh summons where the original summons have expired. The Court can only extend the life of valid summons but once the same expire, it cannot be revived. What the Applicant is seeking is asking the Court to resuscitate expired summons. Sections 1A & 3A of the Civil Procedure Act which the Applicant has invoked does not aid in the grant of the orders sought. The overriding objective of the Civil Procedure Act Cap 21 Laws of Kenya under Section 1A is intended to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes brought for resolution before our Courts. This suit was filed in the year 2013 and is now well over 8 years in the corridors of justice. It will not be assisting the Courts in expeditious resolution of disputes if this application is allowed. The application is a similar application as the one dismissed by this Court on 12th February, 2021.

The upshot of my finding is that the Notice of Motion dated 30th April 2021 lacks merit and the same is hereby dismissed with no order as to costs. It is so ordered

RULING READ, SIGNED AND DELIVERED PHYSICALLY AT KERUGOYA THIS 23RD DAY OF JULY, 2021

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E.C. CHERONO

ELC JUDGE

In the presence of :-

1. Ms Wangechi Munene holding brief for Wanjiru Waweru
2. Mr. Asimwe holding brief for Magee
3. Kabuta – Court clerk.