



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC. CASE NO. 558 OF 2009

MERCY WANGARI.....1ST PLAINTIFF

JAMES KIBE.....2ND PLAINTIFF

PETER MWAURA.....3RD PLAINTIFF

=VERSUS=

HIRAM GITONGA MBOGO.....1ST DEFENDANT

WALTER OKEO MBATA.....2ND DEFENDANT

FRANCIS NGEMA WAITITU.....3RD DEFENDANT

ANN WAMBUI GEMA.....4TH DEFENDANT

JULIUS NGORO NGARI5TH DEFENDANT

FERDINARD WAITITU.....6TH DEFENDANT

MARTIN NJUGUNA MWANGI.....7TH DEFENDANT

SALONE NAHILILE.....8TH DEFENDANT

RULING

1. I have considered the notice of motion dated 13/5/2019. It was argued today. I elected to consider it and make a brief determination on the spot.
2. The applicant seeks an order to the effect that the suit herein has abated. In the alternative, the applicant seeks an order striking out the suit. The ground upon which the above orders are sought is that the plaintiff did not serve summonses, to enter appearance within 12 months.
3. The case of the plaintiffs is that they served summonses but the Process Server failed to mention in his affidavit sworn 7/4/2010 that other than the plaint and chamber summons he also served summonses to enter appearance.
4. This suit was filed in 2009. Parties have participated in the proceedings all along. The issue of service was raised by Mr Nyandieka, counsel for the defendant, on 9/7/2018 when the matter came up for hearing. The issue was not raised on 21/2/2018 when the court set down the matter for substantive hearing in the presence of both counsel.
5. I have reflected on the tenor and import of Article 159 of the Constitution and the overriding objective of the Civil Procedure Act and Rules. I have also reflected on the key objective of the Environment and Land Court Act and the Rules made thereunder. In my view, the key objective of a summons to enter appearance is to notify a defendant that a claim has been lodged against him and that he is required to respond to the claim. In the present suit, the defendants have been aware of this suit and have all along participated in these proceedings. They indeed participated in the fixing of a hearing date. In my view, it would defeat the object of Article 159 of the Constitution if this dispute relating to land were thrown out on technicalities without going to the merits of each party's case. The spirit of Article 159 and the **Environment and Land Court Act** require that I endeavor to dispense justice without undue deference to procedural technicalities.

6. Consequently, I will not grant the orders sought. I will instead grant the defendants 15 days within which to file and serve their defences. The plaintiffs will file their reply to defence within 7 days of service. Secondly, the plaintiffs will pay the defendants throwaway costs of this application assessed at Kshs 20,000. The amount is to be paid within 45 days. In default, this suit shall stand abated. I will not make any pronouncement on the deceased defendants because I do not have evidence on their respective dates of death and I am not seized of a formal application by their estates.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21ST DAY OF JANUARY 2020.

B M EBOSO

JUDGE

In the presence of:-

Ms Mukiri holding brief for Mr Gachomo for the plaintiff

Mr Nzaku holding brief for Mr Nyandieka for the defendant

June Nafula - Court Clerk