



IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. 231 OF 2017

BETWEEN

MARTIN MWANGI NJOKI.....1ST PLAINTIFF
MUNGAI KINUTHIA..... 2ND PLAINTIFF
NANCY NYAMBURA GITHUKU.....3RD PLAINTIFF
PETER KAMAU NG'ANG'A.....4TH PLAINTIFF
RUTH WANGUI KORIO.....5TH PLAINTIFF
PETER MAINA NJUGUNA.....6TH PLAINTIFF
CHARLES NJOROGE MAINA.....7TH PLAINTIFF
GEORGE NGUKU NJIHIA.....8TH PLAINTIFF
CITY STAR SHUTTLE CO., LTD.....9TH PLAINTIFF
BEAUTY WHOLESALE (K) LTD.....10TH PLAINTIFF
CHANIA PRESTIGE SHUTTLE LTD.....11TH PLAINTIFF

AND

TOYOTA KENYA LIMITED.....1ST DEFENDANT
NAIROBI HINO LIMITED.....2ND DEFENDANT
TSUSHO CAPITAL KENYA LIMITED.....3RD DEFENDANT
KENYA BUREAU OF STANDARDS.....4TH DEFENDANT

RULING NO. 2

1. I am called upon to adjudicate upon two applications The first application is a Notice of Motion dated 1st October 2019 in which the 1st, 5th, 8th and 11th plaintiffs have moved the court, inter alia, under **Order 6 rule 2(2)** of the **Civil Procedure Rules** seeking an order that this court, “*be pleased to re-issue the validity of summons herein issued on 31st May 2017*” and consequential orders. In the second application, a Notice of Motion dated 20th November 2019, the 1st defendant has moved the court under **Order 5 rule 1(6)** of the **Civil Procedure Rules** seeking an order that, “*the suit herein be marked as abated.*”

2. From the provisions of the **Civil Procedure Rules** invoked and the prayers sought, the issue for resolution is whether the court should declare the suit as abated for want of failure to serve the summons to enter appearance (“summons”) issued or whether the court should extend the validity of summons and direct that the same be served.

3. This suit was commenced by a plaint dated 19th May 2017 and filed on 31st May 2017. The summons filed with the plaint were signed by the Deputy Registrar of this court on 31st May 2017. The position taken by counsel for the plaintiff is that summons’ were neither collected nor served.

4. I have perused the court file very carefully and I have seen the affidavit of Lucas Omolo Oguto, a process server instructed by the firm of J. Harrison Kinyanjui and Company Advocates previously on record for the plaintiffs, sworn on 13th June 2017 and filed on 14th June 2017 in which he states as follows:

[1] THAT I am a process served duly authorised to serve Court process thus competent to swear this affidavit.

[2] THAT on the 8th day of June 2017, I received Summons to enter appearance dated 31st May 2017, an Order dated 2nd June 2017 and an undertaking from the firm of J. HARRISON KINYANJUI & CO. ADVOCATES for the Plaintiffs herein in this matter, with instructions to serve the same upon the Defendants herein.

[3] THAT on the same day at around 2.00pm, I went to the offices of the 1st Defendant, Toyota Kenya Limited, Uhuru Highway where I served the above mentioned documents to the receiving clerk, one Carol Bosibori. She accepted service and acknowledged receipt by way of stamping and signing on my principal copies which I herewith return to this Honourable Court duly served.

[4] THAT on the same day at around 3.00pm I went to the offices of the 4th Defendant, Kenya Bureau of Standards, Pepo road, wherein I served the above mentioned document to an Advocate, one Brian. He accepted service and acknowledged receipt by stamping and signing on my principal copies which I herewith return to this Honourable court duly served.

[5] THAT later on the same day at around 3.30pm, I went to the offices of the 2nd Defendant, Nairobi Hino Limited, Pepo road, where I served the above mentioned documents to one Kirima. He accepted service and acknowledged receipt by signing on my principal copies which I herewith return to this Honourable court duly served.

[6] THAT on the 9th day of June 2017 at around 9.00am I went to the offices of the 3rd Defendant, Tsusho Capital Kenya Limited, Uhuru Highway where I served the above mentioned documents to the receiving clerk, one Joseph. He accepted service and acknowledged receipt by way of stamping and signing on my principal copies which I herewith return to the Honourable Court duly served.

5. It is clear from the aforesaid deposition that all the defendants were served with the summons and plaint. I also confirm that the copies of the summons returned to the court were duly endorsed as stated in the deposition. In the circumstances both applications lack merit as the defendants were served with summons.

6. I dismiss the Notices of Motion dated 20th November 2019 and 1st October 2019. Each party shall bear their own costs. As the defendants have neither entered appearance nor filed defence, I direct each defendant to enter appearance and file defence within **fourteen (14) days** from the date hereof. The plaintiffs shall serve this ruling and order on the defendants who did not attend the hearing of the applications.

DATED and DELIVERED at NAIROBI this 6th day of FEBRUARY 2020.

D. S. MAJANJA

JUDGE

Mr Ndegwa instructed by Sunkuli Ndegwa and Company Advocates LLP for the 1st, 5th, 8th and 11th plaintiffs.

Mr Mbaluto instructed by Oraro and Company Advocates for the 1st defendant.

Mr Kamau for the instructed by Wandabwa and Company Advocates for the 3rd defendant.