



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO 1192 OF 2013**

**SANJAY KUMAR KANANI ..... PLAINTIFF**

**VERSUS**

**NISHA SHAH.....1ST DEFENDANT**

**SUJAY SHAH.....2ND DEFENDANT**

**RULING**

1. The plaintiff brought this suit on 13/9/2013 contending that he was a lawful tenant of Pratik Ramesh Shah (**the deceased**). He contended that the defendants who did not have legal capacity to act on behalf of the Estate of the deceased had purported to take over management of the suit premises and had threatened to evict him from the suit premises despite the fact that he had been faithfully paying the agreed rent. Consequently, the plaintiff sought the following orders:

***a) An order of injunction do issue to the defendants or any of them restraining the defendants whether by themselves, their employees, servants or agents or otherwise howsoever from interfering with the plaintiff's right of use of all that premises known as LR No 209/4593/5BI, Waiyaki Way, and to prohibit the defendants, their servants and or agents or any of them, from any actions that would interfere with or deter the plaintiff's rights of use of the said premises without following the proper procedure at law.***

***b) General Damages***

***c) Costs of this Suit***

***d) Any further or other order as this honourable court may deem fit.***

2. Together with the plaint initiating this suit, the plaintiffs filed a notice of motion dated 13/9/2013 through which he sought interlocutory injunctive orders. He also sought leave of the court to serve summonses through an advertisement in either the Daily Nation or the Standard Newspapers.

3. Between September 2013 and October 2018, the plaintiff did not extract and/or serve summonses to enter appearance. The court listed the matter for directions on 22/1/2018 when counsel for the plaintiff requested the court to list the case for pre-trial conference. When the matter came up for pre-trial conference on 22/11/2018, counsel for the defendants intimated to the court that the defendants had not been served with summonses to enter appearance. On her part, counsel for the plaintiff stated that they had served the plaint together with the application but did not indicate if summonses to enter appearance had been served. Subsequently, on 8/4/2019, the Deputy Registrar listed the matter for notice to show cause before me on 31/10/2019.

4. On 8/4/2019, the plaintiff brought a notice of motion dated 5/4/2019 seeking an order directing issuance of summonses to enter appearance. He also sought an order enlarging time within which to issue summonses to enter appearance. The motion was premised upon the ground that summonses to enter appearance in the suit had never been issued.

5. In a supporting affidavit sworn on 5/4/2019, Wanja Mutegi Teresia, counsel for the plaintiff, deposed that upon filing this suit, the process server made several attempts to effect service but the defendants' location could not be ascertained. Consequently, on 19/9/2013, the plaintiff served a copy of the interim restraining order on the defendant through a notice in the Standard Newspaper. This prompted the defendant to appoint Mohamood M Sevany Advocate who filed a notice of appointment on 25/9/2013. She added that the whereabouts of the defendants were still unknown. She urged the court to enlarge the time for service of summonses to enter appearance. The court file does not bear any formal instrument of opposition filed by the defendants.

6. The motion was argued orally in open court on 4/12/2019. Ms Mutegi, counsel for the plaintiff, submitted that the defendants entered appearance through a notice of appointment but have failed to file a defence, making it impossible for the suit to progress. She added that the defendants had taken the view that they cannot file a defence without service of summonses to enter appearance.

7. In response, Mr Sevany, counsel for the defendants, submitted that service of summons is a mandatory requirement. He added that this suit had been in court for over 5 years, and that although they had been on record since 2013, they had never been served with summonses to enter appearance. Counsel further submitted that the plaintiff should have sought an order for re-issuance of summonses.

8. I have considered the said notice of motion dated 5/4/2019 together with the rival submissions. The single issue falling for determination in the motion is whether the plaintiff has satisfied the criteria for grant of an order enlarging time for service of summons to enter appearance.

9. Order 50 rule 6 of the Civil Procedure Rules grants this court general powers to enlarge time within which to do anything prescribed under the Civil Procedure Rules. Order 5 rule 2 of the Civil Procedure Rules grants this court jurisdiction to extend the validity of summons from time to time. Suffice to say that, the jurisdiction of the court under the above two legal frameworks is a discretionary one.

10. It is apparent from the court record that parties to this suit went into slumber between 2013 and October 2018. The plaintiff had the opportunity to serve summonses through the media but elected to only serve the interim order. On their part, the defendants had the opportunity to move the court to strike out the suit but did nothing. The dispute remains unresolved and would still require adjudication.

11. In the circumstances, I would exercise discretion and issue an order directing re-issuance of summonses to enter appearance. The said summonses shall be served through a prominent notice in either the Daily Nation or the Standard Newspapers within 30 days from today. The plaintiff shall within the same period of time file and serve on the defendants a single, bound, paginated and indexed bundle of pleadings, witness statements, and documentary evidence. In default of any of the above, this suit shall stand dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 3RD DAY OF FEBRUARY 2020.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

Mr Sevany for the respondent

June Nafula - Court Clerk