



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 116 OF 2015**

**ANNE WAIGURU.....PLAINTIFF**

**VERSUS**

**THE DAILY POST.....1<sup>ST</sup> DEFENDANT**

**BLOGGER INC.....2<sup>ND</sup> DEFENDANT**

**GOOGLE INC.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling seeks to determine the application dated 6<sup>th</sup> March, 2018 seeking orders for extension of time, limited for applying for extension of validity of summons to enter appearance against the Defendants, that the validity of summons to enter appearance against the Defendants be extended for a further period of 12 months or alternatively that the Court be pleased to re-issue summons to enter appearance against the Defendants. The Application is supported by the Affidavit of Wanjiru Ngige as well as on the grounds on the face of the application.

2. As captured in the application and the supporting affidavit, the Plaintiff herein filed a suit against the defendants and sought leave of the court to serve summons outside jurisdiction of the country. The summons in this suit were issued on 23<sup>rd</sup> March, 2015 and they expired as the counsel sought assistance from the Ministry of Foreign Affairs to serve outside the jurisdiction. Annexed to the Affidavit are correspondences between the Plaintiff and the Ministry of Foreign Affairs and the Chief Registrar of the Judiciary concerning the service of the summons.

3. The Application was canvassed by way of written submissions which I have considered. From the annexures to the application, it is clear that the Plaintiff has made efforts to facilitate service of the summons. The last correspondence is a letter from the Ministry of Foreign Affairs dated the 30<sup>th</sup> January, 2018 advising the Plaintiff's Advocates of the costs of effecting the service of the summons. It is my finding that the expiry of the summons was not occasioned by indolence on the part of the Plaintiff and therefore the circumstances of this case justify the granting of the orders sought.

4. Order 5 Rule 2 of the Civil Procedure Rules empowers this Court to extend the validity of summons in justifiable circumstances. It is provided that-

*“(1) A summons (other than a concurrent summons) shall be valid in the first instance for twelve months beginning with the date of its issue and a concurrent summons shall be valid in the first instance for the period of validity of the original summons which is unexpired at the date of issue of the concurrent summons.*

(2) Where a summons has not been served on a defendant the court may extend the validity of the summons from time to time if satisfied it is just to do so.

(3) Where the validity of a summons has been extended under sub-rule (2) before it may be served it shall be marked with an official stamp showing the period for which its validity has been extended.”

5. Therefore, and by virtue of the discretion provided under Order 5 Rule 2 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, which preserves the *inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court*, I extend the validity of the Summons to enter Appearance against the Defendants issued on 23<sup>rd</sup> March, 2015 for a further period of 12 months from the date of this ruling. Costs of the application shall be in the cause.

6. Dated, Signed and Delivered at Nairobi this **20<sup>th</sup>** day of **September**, 2018

.....

**L. NJUGUNA**

**JUDGE**

**In the presence of:**

..... ***For the Plaintiff***

..... ***For the defendant***