

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

LAND AND ENVIRONMENT CASE NO. 153 OF 2014

PIUS SIMIYU MANUEL(Suing as legal representative of the estate of
OMARI KHAOYA MANYONGE(deceased)PLAINTIFF

VERSUS

DAVID KALACHI MOYIA1ST DEFENDANT

ERICK WAFULA KHISA2ND DEFENDANT

ALICA KATILA BARASA3RD DEFENDANT

MARY CONSOLATA W. ISHEBE.....3RD DEFENDANT

RULING

[1] This case was fixed for directions on 23rd February 2016. When the case was called out for directions Mr. Were learned counsel instructed by Were & Co. Advocates appeared while M/s Edna instructed by Nandwa & Co. Advocates appeared for the 1st defendant.

[2] Mr. Were told the court that the summonses in this case were only served on the first defendant. He said that the summons for the other defendants were taken from his office by the plaintiff who gave them to another process server. He told the court that to this day he does not know whether the summons are served or not. He requested the court to grant him time to find out if they are served or not.

[3] M/s Edna for Nandwa & Co. in reply stated that the plaintiffs were granted leave to file suit out of time on 17th July 2014. That the plaint was filed on 16th August 2014. That the summons were not served close to two years. She argued that it was a delaying tactic. She argued that the defendant have complied with order 11 of the Civil Procedure Rules on 17th April 2015 and that the plaintiffs have been served with the documents.

[4] The copies of summons in the court file are dated 19th August 2014. If those summons have not been served, they have by now expired. The court file has no affidavits showing whether they are served. There is no application for the extension of the said summons. It is important to know whether they are served or not to enable this court to issue further directions in this case. However, when the plaintiff was served with appearance and defence and all the documents in compliance with Order 11, the plaintiff should have woken up to find out if the summons had been served.

It is strange that the plaintiff and his counsel are in court and neither of them have any clue as to whether or not the summons were served. This is the plaintiff's case! Be that as it may, I will give the plaintiff 30 days to find out if the summons are served.

[5] The plaintiff will pay the costs of the defendant for a full day's court attendance on 23rd February 2016. The defendant may fix this suit for hearing for further orders after 30 days from the date hereof.

Dated at Bungoma this 9th March 2016

S.MUKUNYA - JUDGE