

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NUMBER 158 OF 2009

KAMLESH GOHILAPPELLANT

VERSUS

AUS ABDI RAMADHAN.1ST RESPONDENT

ABUSHARIAA AHMED MOHAMMED. 2ND RESPONDENT

(From the Ruling of E N Maina, Senior Principal Magistrate Nairobi in CMCC No. 3137 of 2006)

J U D G M E N T

In this appeal the facts show that the trial magistrate dismissed an application seeking extension of a Summons to Enter appearance which had earlier been extended once. Her main ground for dismissal was that the Applicant-the Appellant herein – had not properly supported the application with an affidavit showing that proper and sufficient attempts to serve the renewed summons had been made.

I have examined the affidavit which was supporting the application for extension aforestated. It shows that the extended summons to Enter Appearance had been returned by a firm of Process Servers who had received it from the applicants but had failed to serve it because they could not trace the Defendants.

Furthermore, the said application for extension, although for a second time extension, was filed before the period of validity of the Summons had expired. That demonstrated that the Applicant was keen to serve the summons, but only the Defendant was until then, not traceable.

Finally, allowing extension for the second time could not prejudice any other party since the Defendant who had not been served, was not even aware of the summons.

In the above circumstances this court finds no reasonable grounds upon which the application for extension aforestated, was dismissed. This appeal which the court finds has merit, is hereby allowed. The court hereby extends the said Summons to Enter Appearance which the lower should forthwith re-issue for the purpose of further attempt of service upon the Defendant.

Costs are in the cause. Orders accordingly.

Dated and Delivered at Nairobi this 14th day of July, 2015.

.....

D A ONYANCHA

JUDGE