



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 141 OF 2015**

**FESTUS MWANIKI LONZI.....PLAINTIFF/APPLICANT**

**VERSUS**

**MWANIA KIAMBA.....DEFENDANT/RESPONDENT**

**RULING**

1. In the Notice of Motion dated 22<sup>nd</sup> June, 2018, the Plaintiff is seeking for the following orders:

**a. That time for extending the validity of summons be enlarged.**

**b. That the Honourable Court be pleased to extend the validity of summons issued against the Defendant herein for a further period of twelve (12) months.**

**c. That costs of this Application be in the cause.**

2. The Application is premised on the grounds that the Summons herein were issued on 24<sup>th</sup> October 2016; that the said Summons have since expired and that the validity of the Summons should be extended for them to be served upon the Defendant. The Plaintiff did not file submissions in respect to the Application.

3. The record shows that this court issued Summons to the Plaintiff for service on the Defendant on 24<sup>th</sup> October 2016. The said Summons were collected by the Plaintiff on 25<sup>th</sup> October, 2016. The said Summons have never been served on the Defendant and the Plaintiff is seeking for the extension of the validity of the same.

4. Order 5 Rule 2 (1) and (2) of the Civil Procedure Rules provides as follows:

**“2(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.”**

5. Order 5 Rule 2(7) on the other hand provides that where no Application has been made under sub-rule (2), the court may without notice dismiss the suit at the expiry of twenty four (24) months from the date of issue of the original Summons.

6. The current Application was made before the court could dismiss the suit on its own Motion. Consequently, and in view of the reasons that have been given for non-service of the Summons on the Defendant, I shall extend the validity of the Summons as prayed in the Plaintiff.

7. For those reasons, I allow the Application dated 22<sup>nd</sup> June, 2018 as follows:

**a. The validity of Summons issued against the Defendant is extended for a further period of twelve (12) months from the date of this Ruling.**

**b. The costs of the Application to be catered by the Plaintiff himself.**

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2019.**

O.A. ANGOTE

JUDGE