



- i. The Respondent herein filed a Plaintiff in this matter on the 24.05.2025.
  - ii. However, the Respondent failed to extract the Summons to Enter Appearance in line with Order 5 Rule 1 of the Civil Procedure Rules, 2010.
  - iii. Consequently, due to the failure to extract the Summons to enter Appearance in line with Order 5 Rule 1 of the Civil Procure Rules, 2010, this suit before the Court has abated.
  - iv. In essence, the Applicant pleaded the Court lacks the jurisdiction to hear and determine the present suit.
3. The present Application was duly served on the Respondent who opposed the same by filing a Replying Affidavit sworn by the Advocate dated 30.06.2025 based on the following facts; -
- i. The Respondent's Counsel stated that the Plaintiff in this suit was filed on the 24.05.2025.
  - ii. Upon filing of the said Plaintiff, the Respondent's Counsel prepared and delivered the Summons to Enter Appearance to the Deputy Registrar in the Environment and Land Court for execution within the prescribed time.
  - iii. However, the said Summons to Enter Appearance were misplaced in the Environment and Land Court Registry.
  - iv. By the time the Respondent's Counsel learnt that the Summons to Enter Appearance had been misplaced, the period prescribed for issuance of the same had lapsed.
  - v. In essence therefore, the Respondent's Counsel was of the view that he Summons to Enter Appearance were applied for within the prescribed period provided in Order 5 Rule 1 of the Civil Procedure Rules, 2010.

- vi. As such, the Respondent's Counsel was of the view that the present Application was mischievous, bad in law and not merited.
4. The Replying Affidavit was served on the Applicant who did file a Further Affidavit dated 22.07.2025 in which he did respond as follows; -
    - i. The Applicant stated that the Respondent's Advocates Replying Affidavit was full of falsehood and was misleading.
    - ii. To begin with, the Applicant stated that currently, Summons to Enter Appearance are lodged on the Judiciary E-filing Platform and are no longer physically delivered in Court.
    - iii. Secondly, the Applicant did aver that upon uploading of the Summons to Enter Appearance on the Judiciary E-Filing platform, the system generates the same and a party simply downloads the same on their end after the Plaint is registered and issued with a number.
    - iv. In essence therefore, the practice of Deputy Registrar's executing the Summons to Enter Appearance is no longer the practice as alleged by the Respondent's Advocate.
    - v. The Applicant averred that it was common knowledge that since the advent of the Judiciary E-filing platform, all pleadings and process are undertaken on the said platform. Thus, if the summons existed at the time of filing the plaint as alleged, then the same ought to have been uploaded on the e-filing platform.
    - vi. According to the Applicant, the Respondent herein uploaded the Summons to Enter Appearance on to the

Judiciary E-Filing platform on the 24.06.2025 when the period provided under Order 5 Rule 1 had in fact lapsed.

- vii. In conclusion, the Applicant reiterated that the Respondent's suit had abated based on the failure to extract the Summons to Enter Appearance within the prescribed period provided in Order 5 Rule 1.
5. The Court gave directions that the present suit would be canvassed by way of written submissions.
6. Subsequently, the Applicant did file his submissions dated 22.07.2025 while the Respondent did file his submissions dated 29.07.2025.
7. The Court has carefully perused the present application, the Replying Affidavit as well as the Supplementary Affidavit as the submissions and identified the following issues for determination.

**ISSUE NO. 1- WHEN WAS THE SUMMONS TO ENTER APPEARANCE FILED IN COURT?**

**ISSUE NO.2- WERE THE SUMMONS TO ENTER APPEARANCE FILED WITHIN THE PERIOD PRESCRIBED UNDER ORDER 5?**

**ISSUE NO.3- WHETHER THE PLAINTIFF'S SUIT HAS ABATED?**

**ISSUE NO.4- WHETHER THE PRESENT APPLICATION IS MERITED?**

**ISSUE NO.5-WHO SHALL BEAR THE COSTS OF THE APPLICATION?**

8. The Court having identified the above-mentioned issues for determination, the same will now be discussed as provided below.

## **ISSUE NO. 1- WHEN WAS THE SUMMONS TO ENTER APPEARANCE FILED IN COURT?**

9. The first issue for determination is whether the Respondent filed the Summons to Enter Appearance.
10. According to the Applicant, the Respondent herein filed did file the Plaint in this proceeding on the 24.04.2025.
11. However, on the material date, the Summons to Enter Appearance were never filed by the Respondent.
12. In the Supplementary Affidavit, the Applicant stated that the Summons to Enter Appearance were subsequently uploaded into the Judiciary E-Filing platform on the 24.06.2025.
13. In essence therefore, by the time the Respondent was uploading the Summons to Enter Appearance on the 24.06.2025, the period of 30 days provided under Order 5 Rule 1 (2) of the Civil Procedure Rules, 2010 had since expired.
14. In net effect of the omission by the Respondent is that the present suit abated and the Court does not have the jurisdiction to hear and/or entertain the present suit.
15. The Respondent on the other hand was of a contrary view.
16. The Respondent pleaded that on the 24.04.2025 when the Plaint was filed, the Summons to Enter Appearance were also delivered to the Court registry for the Deputy Registrar of the Environment and Land Court to execute the same.
17. However, the Summons to Enter Appearance were misplaced in the Court Registry of the Environment and Land Court.
18. It was later that the Respondent discovered that the same had not been executed by the Deputy Registrar of the Environment & Land Court that the second set of Summons to

Enter Appearance were lodged on the platform on the 24.06.2025.

19. The Respondents were of the view that the Summons to Enter Appearance were duly filed together with the Plaint herein and within the prescribed time provided for under Order 5 Rule 1.
20. To begin with, this Court takes judicial notice that the Judiciary ceased to process any Court documents manually.
21. Since the launch of the E-filing, all documents are uploaded into the Judiciary E-Filing platform for processing and thereafter the parties simply download the outcomes from the comfort of their offices and/or machines.
22. Consequently, the allegation that the Respondent delivered hardcopies of the Summons to Enter appearance to the registry of the Environment and Land Court for the Deputy Registrar to execute is misleading and mischievous to say the least.
23. This is not the practice of how litigants obtain Summons to Enter Appearance of the Judiciary.
24. This Court having made its comments on how the Respondent alleges to have delivered the Summons to Enter Appearance to the Court, the only other time that Summons were lodged by the Respondent was on the 24.06.2025.
25. By this time, the period between 24.04.2025 when the Plaint was filed and 24.06.2025 when the Respondent actually uploaded the Summons to Enter to Appearance was a period of 60 days.

**ISSUE NO.2- WERE THE SUMMONS TO ENTER APPEARANCE FILED WITHIN THE PERIOD PRESCRIBED UNDER ORDER 5?**

26. The second issue for determination is whether the Summons to enter Appearance were filed within the prescribed time under Order 5 Rule 1 of the Civil Procedure Rules, 2010.
27. The provisions of Order 5 Rule 1 of the Civil Procedure Rules, 2010 states as follows; -

**1. (1) *When a suit has been filed a summons shall issue to the defendant ordering him to appear within the time specified therein.***

**(2) *Every summons shall be signed by the judge or an officer appointed by the judge and shall be sealed with the seal of the court without delay, and in any event not more than thirty days from the date of filing suit.***

**(3) *Every summons shall be accompanied by a copy of the plaint.***

**(4) *The time for appearance shall be fixed with reference to the place of residence of the defendant so as to allow him sufficient time to appear: Provided that the time for appearance shall not be less than ten days.***

**(5) *Every summons shall be prepared by the plaintiff or his advocate and filed with the plaint to be signed in accordance with subrule (2) of this rule.***

**(6) *Every summons, except where the court is to effect service, shall be collected for service within thirty days of issue or notification,***

**whichever is later, failing which the suit shall abate.**

28. According to the provision of Order 5 Rule 1 (2) of the Civil Procedure Rules, 2010, any party that institutes a Plaint is required to obtain duly signed Summons to Enter Appearance within 30 days from the date of filing the Plaint therein.
29. The wording of Order 5 Rule 1 (2) of the Civil Procedure Rules, 2010 uses the word '*SHALL*' which connotes the mandatory nature of provisions.
30. In the instant case, the Respondent failed to upload the Summons to Enter Appearance until 24.06.2025 from 24.04.2025 when the Plaint herein was filed.
31. Clearly therefore, the Summons to Enter Appearance were filed out of the 30 days prescribed under Order 5 Rule 1 (2) of the Civil Procedure Rules, 2010 hence contravened the above provision of law.

**ISSUE NO.3- WHETHER THE PLAINTIFF'S SUIT HAS ABATED?**

32. The third issue is whether the Respondent's suit had abated in view of the failure to comply with Order 5 Rule 1 (2) of the Civil Procedure Rules, 2010.
33. The Applicant in the present Application held the view that the Plaint dated 24.04.2025 abated after 30 days had lapsed without the Respondent having obtained the Summons to Enter Appearance.
34. The Respondent did not despite the fact that the Summons to Enter Appearance were not issued within the prescribed 30 days but sought to explain the reason why they were not issued.

35. As earlier stated, the Respondent's explanation as to why the Summons to Enter Appearance within the prescribed time provided under Order 5 Rule 1 (2) of the Civil Procedure Rules was not satisfactory.
36. Consequently, this Court is clear in its mind that the Respondent's Summons to Enter Appearance were filed way outside the period prescribed under Order 5 Rule 1 (2) of the Civil Procedure Rules, 2010.
37. This being the case, then the provisions of Order 5 Rule 1 (6) of the Civil Procedure Rules, 2010 states that such a suit is deemed to have abated.
38. Once again, the use of the word '*SHALL*' in the provisions of Order 5 Rule 1 (6) makes it of a mandatory nature and the Court has no alternative but to declare the Plaint in this suit to have abated due to failure to take out Summons to Enter Appearance within the period provided under Order 5 Rule 1(2).
39. In the case of **ROYAL MEDIA SERVICES LIMITED- VERSUS- OMINDE & ANOTHER (2024) KEHC 9124 (KLR)** the Court expressed itself as follows on the provisions of Order 5 Rule 1 of the Civil Procedure Rules, 2010; -

***“The above decisions provide the jurisprudence that where a party files a suit and there is no compliance with Order 5 Rules 1 (1) to (6) of the Civil Procedure Rules, the jurisdiction of the court is not properly invoked and the suit abates under sub-rule 6. Where the jurisdiction of the court is not properly invoked, Article 159(2)(d) cannot save the situation as such does not amount to a technicality”.***

#### **ISSUE NO.4- WHETHER THE PRESENT APPLICATION IS MERITED?**

40. Based on the findings in Issue No. 2 and 3 hereinabove, it is clear that the present Application is merited.

**ISSUE NO.5-WHO SHALL BEAR THE COSTS OF THE APPLICATION?**

41. Costs usually follow the event and in this instance, the Applicant having been successful in the present Applicant will be awarded costs.

**CONCLUSION**

42. In conclusion, this Court hereby makes the following Orders in determination of the present Application; -

- A. **THE NOTICE OF MOTION DATED 19.06.2025 IS MERITED AND ALLOWED.**
- B. **BOTH THE PLAINT DATED 24.04.2025 AND THE NOTICE OF MOTION DATED 24.04.2025 BE AND ARE HEREBY STRUCK OUT FORTHWITH.**
- C. **THE 2<sup>ND</sup> RESPONDENT IS AWARDED COSTS FOR BOTH THE PLAINT DATED 24.04.2025 AS WELL AS THE NOTICE OF MOTION APPLICATION DATED 24.04.2025 PAYABLE BY THE PLAINTIFF HEREIN.**

**DATED, SIGNED and DELIVERED in ELDORET this 25<sup>th</sup> day of NOVEMBER, 2025.**

**HON. EMMANUEL.M. WASHE  
JUDGE**

**IN THE PRESENCE OF:**

COURT ASSISTANT: MR. BRIAN

COUNSEL FOR THE APPLICANT:

MS. SHEUNDA H/B FOR MR.  
OSUNDWA

COUNSEL FOR THE RESPONDENT: MR. BUNDOTICH