



**Chege v Nafas World Auto (K) Limited & another (Civil Case
359 of 2017) [2025] KEMC 292 (KLR) (2 December 2025) (Ruling)**

Neutral citation: [2025] KEMC 292 (KLR)

**REPUBLIC OF KENYA
IN THE MAKINDU LAW COURTS
CIVIL CASE 359 OF 2017
YA SHIKANDA, SPM
DECEMBER 2, 2025**

BETWEEN

PETER MUNIU CHEGE PLAINTIFF

AND

NAFAS WORLD AUTO (K) LIMITED 1ST DEFENDANT

BAKARI MRIPHE MTUNDO 2ND DEFENDANT

RULING

1. On 14/8/2025 the plaintiff filed an application dated 11/8/2025 pursuant to the provisions of Order 5 rules 1 and 2(2) and 2(5) of the Civil Procedure Rules and sections 1A, 1B and 3A of the [Civil Procedure Act](#). The application seeks the following orders:
 1. That this Honourable court be pleased to enlarge time for filing an application for re-issue of summons and allow the application filed out of time;
 2. That this Honourable court be pleased to re-issue summons to enter appearance against the 2nd defendant herein for a period of twelve (12) months which summons expired;
 3. That costs of the application be provided for.

The application is supported by an affidavits sworn by Counsel for the plaintiff and Aaron Mwendwa and is premised on the following general grounds:

- a. The plaintiff's advocate on record made diligent efforts to trace and serve the 2nd defendant herein with summons to enter appearance and the same has proven impossible with the time stipulated on the summons to enter appearance which is twelve (12) months;



- b. As a result of the foregoing, summons have expired before personal service could be effected upon the 2nd defendant;
 - c. It is in the interest of justice that the summons be re-issued for a further twelve (12) months to enable the plaintiff serve the summons for a fair determination of the issues arising herein;
 - d. Despite diligent efforts to effect personal service, the plaintiff has been unable to effect service during the validity period of the summons;
 - e. The plaintiff/applicant shall be gravely prejudiced if the orders sought are not granted as they will be unable to pursue their claim against the 2nd defendant;
 - f. The application has been brought without unreasonable delay given the circumstances of this matter and the fact that the insurers of the plaintiff were still trying to effect service.
2. In the affidavit in support of the application, counsel for the plaintiff deposed that they received the whereabouts of the 1st defendant vide an investigation report dated 18/7/2016, which report indicated that the 2nd defendant was an employee of the 1st defendant herein. That the process server was unable to serve the 2nd defendant. Another process server was appointed but was also unable to trace the 2nd defendant. That the instructing client, being Jubilee Insurance company is in the process of investigating the whereabouts of the 2nd defendant. In the affidavit of Aaron Mwendwa, the process server deposed on the efforts he made in tracing the 2nd defendant.

Main Issues For Determination

- 3.. The record indicates that the suit herein was filed on 23/11/2017 and summons to enter appearance against the 2nd defendant was issued on 30/11/2017. To my mind, the main issues for determination are as follows:
- i. Whether the court has power to extend validity of summons which have expired;
 - ii. If so, whether the plaintiff is entitled to extension of validity of the expired summons.

Analysis And Determination

4. I have carefully considered the application and perused the record.

The Legal Provisions

5. Order 5 rule 2 of the Civil Procedure Rules provides as follows:
- “(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)



- (4)
- (5) An application for an order under sub-rule (2) shall be made by filing an affidavit setting out the attempts made at service and their result, and the order may be made without the advocate or plaintiff in person being heard.
- (6) As many attempts to serve the summons as are necessary may be made during the period of validity of the summons.
- (7) Where no application has been made under subrule (2) the court may without notice dismiss the suit at the expiry of twenty-four months from the issue of the original summons".

6. Order 50 rule 6 provides as follows:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise”.

7 Section 95 of the *Civil Procedure Act* provides as follows:

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired”.

Case Law

8. Over the years, the superior courts have endeavoured to interpret the legal provisions with regard to extension of validity of summons which have expired. Case law reveals that there have been divergent views amongst Judges of the High court. I will highlight some of the authorities.

- i. In the case of *Mechanised Cargo Systems Limited v Fina Bank Limited* [2007] eKLR, the Plaintiff therein had sought the extension of the summons which had expired and had not been served upon the Defendant due to inadvertence on its part. The Defendant opposed the application on the ground that the summons could not be extended beyond the period of twelve months. In that case, Lesiit J (as she then was) found that the court had power to re-issue summons as the Learned Judge was satisfied with the grounds that had been given for not effecting service of the summons upon the Defendant therein;
- ii. In the case of *James Muniu Muchere v National Bank of Kenya Limited* [2010] eKLR, the Appellant therein, who was the Defendant in the suit in the lower court had argued that the Plaintiff was an abuse of the court process as he had been served with summons to enter appearance after the same had expired. Okwengu J (as she then was) distinguished between the extension of the validity of summons and re-issue of summons and found that a court could re-issue summons to enter appearance;



- iii. In the case of *Duncan Mwangi Kiora v Valley Bakery Limited & 2 Others* [2011] eKLR, the court considered the question of extending the validity of the summons which had expired for more than a year and had not been served upon the Defendant therein. While appreciating that the Plaintiff's advocate had been indolent, Dulu J nonetheless extended the validity of the summons by virtue of Article 159 (2)(d) of *the Constitution* of Kenya, 2010;
 - iv. The case of *Kenya Commercial Bank Limited v Ann Kajuju Magondu & Others* [2012] eKLR dealt with the question of extension of validity of summons and re-issue of summons. In that case, Mabeya J held that a court could extend such summons before or after the expiry of the summons as it had power to extend the time for doing something under Order 50 Rule 6 of the Civil Procedure Rules, 2010;
 - v. In the case of *Terry Wanjiru Kariuki v Equity Bank Limited* [2012] eKLR, Odunga J (as he then was) gave priority to the overriding objective captured in the *Civil Procedure Act* and extended the validity of the summons by a period of twelve (12) months;
 - vi. In the case of *Elegant Colour Labs Nairobi Limited v Housing Finance Company (K) Limited & 2 Others* [2010] eKLR, Onyancha J (as he then was) held that extension of Summons can only logically be made while the original summons is still valid. That if the original summons is left to expire, it would be legally impossible to extend it when it has so expired and therefore ceased to exist. That the summons under the Order which have capacity to be extended by the court on the application by the Plaintiff, are the summons that are still valid;
 - vii. The case of *Julius Njoroge Muira v Harrison Kiambuthi Mburu* [2011] eKLR, where Rawal J (as she then was) held that an expired summons ceases to exist and cannot be revived by reissuance. That non-compliance with the process of renewal is a fundamental defect which cannot be cured by inherent powers. The Learned Judge quoted Lord Denning in the case of *Macfoy v United African Limited* (1961) 3 ALL ER 1169 at 1172 wherein he stated as follows:

“If an act is void, then it is in law a nullity and not a mere irregularity. It is not only bad but incurably bad...And every proceeding which is founded on it is also bad and incurably bad. It will collapse”.
 - viii. The case of *Zakaria Somi Nganga v Kenya Commercial Bank Limited & 3 Others* [2008] eKLR, wherein Lesiit J (as she then was) held that where summons to enter appearance has expired, it cannot be revived;
 - ix. In the case of *Barclays Bank of Kenya Limited v Patrick Njuguna Kubai* [2014] eKLR, J.Kamau J held that where summons to enter appearance have expired, the same cannot be extended as they are dead;
 - x. In the case of *Fina Bank Limited v Satyam Industries Kenya Limited & 4 others* [2015] eKLR, J.Kamau J maintained that once summons to enter appearance have expired, they cannot be extended.
9. In view of the foregoing, it is clear that the superior courts and in particular the High Court Judges are not in agreement as to whether the court can extend the validity of summons which have expired. According to the doctrine of stare decisis, this court is bound by the decisions of the High Court. What happens when the opinion of the High Court is divided such as in this case? Which opinion should this court follow? While grappling with the issue, I came across the Court of Appeal decision in the



case of Udaykumar Chandulal Rajani & 4 Others v Charles Thaithi [1997] eKLR, wherein the Court of Appeal held as follows:

“Order V Rule 1 (now Order 5 rule 2) provides a comprehensive code for the duration and renewal of summons and therefore non-compliance with the procedural aspect caused by failure to renew the summons under this rule is such a fundamental defect in the proceedings that inherent powers of the court under Section 3A of the Civil Procedure Act cannot cure. The first summons having expired and the Deputy Registrar having held that there was no proper service he could not in the circumstances re-issue fresh summons.....the court had no power to extend the validity of summons beyond 24 months, when in fact there was no valid summons in existence....”

10. The High court Judges who hold the opinion that the court has power to extend the validity of expired summons appreciate the Court of Appeal authority but tend to distinguish it mainly on the ground that the decision was made prior to the promulgation of the Constitution of Kenya, 2010 and the insertion of sections 1A and 1B of the Civil Procedure Act. I am yet to come across a Court of Appeal decision that has departed from the position in the Udaykumar case (supra). The court of appeal in the authority of Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited [2017] KECA 152 (KLR), quoted with approval the case of Udaykumar.

11. From the provisions of Order 5 rule 2 of the Civil Procedure Rules as well as the authorities considered above, it is clear that the power to extend time for the validity of summons is within the discretion of the court. What is not agreed amongst the High court Judges is whether such power extends after the validity of summons has expired.

12. In the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR, the Supreme Court of Kenya held as follows:

“Time is a crucial component in dispensation of justice, hence the maxim: Justice delayed is justice denied. It is a litigant's legitimate expectation where they seek justice that the same will be dispensed timeously. Hence, the various constitutional and statutory provisions on time frames within which matters have to be heard and determined..... Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it”.

13. The Supreme Court, in the above case, then laid down the following underlying principles that a court should consider when exercising its discretion to extend time:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
3. Whether the court should exercise the discretion to extend time is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;



5. Whether there will be any prejudice suffered by the respondent if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases like election petitions, public interest should be a consideration for extending time.
14. I have had the advantage of perusing the court record. Summons herein were issued on 30/11/2017. Summons to enter appearance expired on 30/11/2018. No application for extension of validity was made before the expiry of the summons. Order 5 rule 2(7) of the Civil Procedure Rules provides that where no application has been made for extension of validity of summons, the court may without notice dismiss the suit at the expiry of twenty-four months from the issue of the original summons.
15. From the provisions of Order 5 rule 2 of the Civil Procedure Rules, it is evident that extension of validity of summons should be made before the original summons expires and that if the application for extension is not made within 24 months from the date of issuance of the original summons, the suit is liable to be dismissed. According to Order 5 rule 2(1) of the Civil Procedure Rules, the validity of summons in the first instance is twelve months beginning with the date of its issue. The application for what the plaintiff calls re-issuance of summons was made on 14/8/2025. That was after a period of over six (6) years from the time the summons expired. Order 5 rule 2, sub-rule 5 provides that the application for extension of validity of summons shall be made by filing an affidavit setting out the attempts made at service and their result. Sub-rule 6 provides that as many attempts to serve the summons as are necessary may be made during the period of validity of the summons.
16. The applicant has annexed what appears to be an affidavit by the process server indicating how in the first instance he failed to trace the 2nd defendant. The record indicates that the process server may not have made enough attempts to serve the 2nd defendant. The only attempt appears to have been made in 2018. There was the option to apply for substituted service but the plaintiff did not consider that. The application has been made after over six years from the time the summons expired yet the plaintiff avers that it has been made without unreasonable delay. Six years is evidently inordinate delay. The plaintiff/applicant has not even bothered to explain the delay.
17. Article 159(2) (b) of *the Constitution* of Kenya provides that justice shall not be delayed. Justice herein has been delayed. In the case of *Argan Wekesa Okumu v Dima college Limited & 2 Others* [2015] eKLR, Mabeya J held that when delay has been established, unless it is well explained, it becomes inexcusable. Section 1A of the *Civil Procedure Act* provides that the overriding objective of the Act and the rules made thereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act and that the Court shall, in the exercise of its powers under the Act or the interpretation of any of its provisions, seek to give effect to the overriding objective. It is also provided that a party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court. Section 1B of the *Civil Procedure Act* enjoins the court to ensure timely disposal of proceedings, among other things. The plaintiff has, without reasonable cause or excuse, failed to assist the court to further the overriding objective of the Act.
18. My view is that a party in default cannot claim as of right, but must earn the court's succour. The same applies to the overriding objective captured under sections 1A and 1B of the *Civil Procedure Act*. A party who decides to sit on their rights and delay or derail the due process cannot hide under the guise of "procedural technicality". Expeditious disposal of disputes is key to all cases and is fundamental to the administration of justice. It is a component of substantive justice as opposed to mere procedural



technicalities. I would borrow the words of the Court of Appeal in the case of John Ongeri Mariaria & 2 Others v Paul Mutundura [2004] 2 EA 163, wherein the Court observed quite authoritatively that:

Legal business can no longer be handled in such sloppy and careless manner. Some clients must learn at their costs that the consequences of careless and leisurely approach to work must fall on their shoulderswhereas it is true that the court has unfettered discretion, like all judicial discretions, must be exercised upon reason not capriciously or sympathy alone..... justice must look both ways as the rules of procedure are meant to regulate administration of justice and they are not meant to assist the indolent.”

19. In the case of Aggrey O. Obare v Telkom Kenya Limited [2011] KEHC 2161 (KLR), Kimaru J (as he then was) had this to say on the issue of delay:

In the present application, although the proceedings were ready on 30th August 2010, (within the period in which the applicant would have lodged the appeal) the applicant did not present the present application to this court until three months later i.e. on 1st December 2010. The applicant did not give a cogent reason for this delay. It is clear that the applicant was indolent. He is guilty of laches. This court cannot exercise its discretion in favour of such indolent litigant. The justice of this case demands that this court declines to exercise its discretion in favour of the applicant”.

20. In the case of Abigaël Barmao v Mwangi Theuri [2013] KEELC 78 (KLR), Munyao Sila J held:

My view of this application is that the plaintiff has been guilty of laches. If a proper explanation had been provided as to why there has been a delay of more than 4 years, then probably I would have been moved to grant the injunction. But no explanation has been given, and I can only conclude that the plaintiff is guilty of delay. There is no doubt that 4 years before seeking relief is a period that is inordinately too long. I therefore decline to grant the injunction sought but make no orders as to costs. I direct the plaintiff to set down the suit for hearing and the matter to be determined on merits”.

21. The remedy sought by the plaintiff is founded in equity and one of the maxims of equity is that "delay defeats equity". In Snell's Equity, 30th Edition at p 33 para 3-16 (quoting Lord Camden L.C in Smith v Clay (1767) 3 Bro. C.C. 639n. at 640n) it is asserted that a court of equity:

.....has always refused its aid to stale demands, where a party has slept upon his right and acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith, and reasonable diligence; where these are wanting, the court is passive, and does nothing."

22. The plaintiff herein is guilty of laches. He has not even explained why he could not move the court in good time for either substituted service or extension of validity of summons. The plaintiff is not even sure of whether they will ever trace and serve the defendant. It is deposed by counsel for the plaintiff in the affidavit in support thereof that the insurance company is still investigating on the whereabouts of the 2nd defendant. If they have not traced him in over six years, will they be able to do so in twelve months? To date, the plaintiff has not even considered substituted service. He wants to get summons then continue with the circus for several years. The matter has been in court for seven years now yet it has not taken off. There is no sign that it will take off any time soon since the plaintiff appears to be stuck.



23. An extension of time is an indulgence requested from the court by a party in default. He is not entitled to an extension. He has no reasonable or legitimate expectation of receiving one. His only reasonable or legitimate expectation is that the discretion relevant to his application to extend time will be exercised judiciously in accordance with established principles of what is fair and reasonable. In those circumstances, it is incumbent on the applicant for an extension of time to provide the court with a full, honest and acceptable explanation of the reasons for the delay. He cannot reasonably expect the discretion to be exercised in his favour, as a defaulter, unless he provides an explanation for the default.
24. In the Nicholas Kiptoo case (supra), The Supreme Court observed that the discretion to extend time is indeed unfettered. That it is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant. In the case of Fahim Yasin Twaha v Timamy Issa Abdalla & 2 others [2015] eKLR, the Supreme Court held that it had the discretion, exercised on the merits of each case, to revive a notice of appeal the prescribed time-frame of which may have lapsed, provided there is a satisfactory explanation for the delay. An analogy can be drawn from the Supreme Court decision with respect to extension of validity of summons. Given the Supreme Court decisions, which decisions bind all other courts other than itself pursuant to the provisions of Article 163(7) of *the Constitution*, I would find that the courts have power to extend the validity of summons which have expired. However, such power ought to be exercised in the manner illustrated herein above.
25. The delay should not be inordinate and there must be sufficient cause to warrant and extension of time. The Supreme Court of India in the case of Parimal v Veena Bharti AIR 2011 Supreme Court 1150, observed that:

Sufficient cause" is an expression which has been used in large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive." However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously" (Emphasis supplied)

- 26 I have already pointed out that no good reasons have been given to warrant extension of time. Consequently, the application must of necessity fail. My understanding of sections 1A, 1B and 3A of the *Civil Procedure Act* is that the provisions cannot be invoked as a matter of course so as to excuse all and any kind of failing on the part of a party to abide by the requirements of the rules. In my view, the overriding objective was brought to ensure that justice is served to both parties and further, where there is a conflict of the Oxygen Rules Principles with the substantive law, the law ought to be interpreted in such a manner that will ensure the administration of justice. I find nothing in the overriding objective to suggest that the delay herein, which has not been sufficiently explained can be excused.
27. Delay is an anathema to a fair trial which is one of the key fundamental rights provided to all litigants under Article 50 of *the Constitution*. Furthermore, it would be an abuse of the court process and contrary to the constitutional principles espoused in Article 159 that requires justice to be administered without delay, to allow a party to bring their action after inordinate delay, without any justifiable



reason. Our system of justice is adversarial in nature. The court should not be used to aid an indolent party under the tag of “interest of justice”. I think I have said enough to show that the application is untenable. The conduct of the plaintiff as explained above defeats the prayers sought. The plaintiff cannot go into slumber then wake up and expect the court to assist him without even explaining why he was asleep all that time.

Disposition

28. Consequently, I find that the application dated 11/8/2025 is devoid of merit. I proceed to dismiss it. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED VIA CTS THIS 2ND DAY OF DECEMBER, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.

