



Kariuki & 2 others (Suing On Behalf Of The Estate Of Grace Wanjiku Kariuki -Deceased) v Kariuki & another (Environment and Land Case E092 of 2023) [2026] KEELC 344 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEELC 344 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E092 OF 2023
JM ONYANGO, J
JANUARY 29, 2026

BETWEEN

SERAH WANAGA KARIUKI 1ST PLAINTIFF
JOSEPH KAMAU KARIUKI 2ND PLAINTIFF
CAROLINE WAMAITHA KARIUKI 3RD PLAINTIFF
SUING ON BEHALF OF THE ESTATE OF GRACE WANJIKU KARIUKI -
DECEASED

AND

NICHOLUS NJENGA KARIUKI 1ST DEFENDANT
LAND REGISTRAR KIAMBU 2ND DEFENDANT

RULING

1. Before this Court is the 1st Defendant's Notice of Preliminary Objection dated 27th May 2025 which invites the Court to strike at the very root of the proceedings by declaring the suit incompetent as against the 1st Defendant, on the asserted ground that summons to enter appearance were neither issued nor served for a period exceeding one year, in defiance of the procedural command of the law.
2. At the directions stage, the Court ordered that the Notice of Preliminary Objection be disposed of by way of written submissions.
3. The 1st Defendant duly complied and filed its submissions within time. The Plaintiff, despite being afforded equal opportunity, did not file any submissions.
4. The Court has nevertheless considered the objection on the basis of the pleadings on record and the law applicable.



Issues for Determination

5. From the pleadings, the objection, and the filed submissions, a single issue falls for determination by this Court: whether the failure to serve summons to enter appearance upon the 1st Defendant for a period exceeding one year renders the suit incompetent as against that Defendant.

Analysis and Determination

6. The threshold question is whether the objection before the Court is properly taken as a preliminary objection. As articulated in *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* [1969] EA 696, such an objection must raise a pure point of law, assume the correctness of the opposing party's pleaded facts, and be capable, if successful, of bringing the proceedings to an end without further inquiry.
7. Tested against the standard in *Mukisa*, the objection raised by the 1st Defendant is properly taken. It turns exclusively on the procedural question of whether summons to enter appearance were issued and served within the period prescribed by law. That inquiry does not invite the Court to resolve contested facts or to exercise discretion on disputed evidence.
8. The law prescribes with unmistakable clarity the procedure for service of summons. Order 5 Rule 1 of the Civil Procedure Rules provides that, upon filing a suit, a summons shall issue to the defendant ordering him to appear within the time specified therein, signed by the judge or an officer appointed by the judge, sealed with the court's seal, and accompanied by a copy of the plaint.
9. Order 5 Rule 2 further stipulates that a summons shall, in the first instance, be valid for twelve months from the date of issue, subject to extension by the Court if service has not been effected and the Court is satisfied that it is just to do so.
10. The rules leave no ambiguity. A summons not served within its period of validity, without lawful extension, undermines the very competence of the proceedings.
11. In the present case the 1st Defendant asserts that summons to enter appearance were never served upon them for a period exceeding one year.
12. The 1st Defendant further avers that they only got knowledge of the present suit when the Plaintiff herein filed a Notice of Motion application dated 27th February 2025 in Kiambu H.C.C E046 of 2024.
13. The 1st Defendant's claim is uncontroverted. Despite being afforded sufficient time and notice the Plaintiff failed and or neglected to put in a response and their written submissions.
14. The Court is therefore confronted with an uncontested factual matrix, leaving the 1st Defendant's claim intact and unassailed. Silence, in this instance, does not signal acquiescence but underscores the gravity of the procedural lapse under scrutiny.
15. Having considered the undisputed facts, the law, and the principles enunciated in *Mukisa*, the Court finds that the 1st Defendant's objection is meritorious.
16. The failure to serve summons for a period exceeding one year, without any extension sought or granted under Order 5 rule 2 of the Civil Procedure Rules, strikes at the very competence of the suit.
17. The Plaintiff's inaction, despite ample opportunity to respond, reinforces the force of the objection. Justice, in its disciplined and measured form, compels the Court to uphold the objection and declare the suit incompetent as against the 1st Defendant.



18. Accordingly, the Court sustains the 1st Defendant's Notice of Preliminary Objection dated 27th May 2025.
19. The suit is hereby declared incompetent against the 1st Defendant and is consequently stuck out with costs.

DATED, SIGNED AND DELIVERED, AT THIKA THIS 29TH DAY OF JANUARY 2026

.....

J. M. ONYANGO

JUDGE

In the presence of:

Ms Murugi for Mr. Kamwiri for the Plaintiff

Mr Kamau for the Defendant

Court Assistant: Hinga

