



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 72 OF 2015**

**EVERLYN NELIMA WESANGULA.....1<sup>ST</sup> PLAINTIFF**

**DANIEL WESANGULA.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**FRANCISCA KAMENE KIIO .....1<sup>ST</sup> DEFENDANT**

**PATRICK MUTUA KIIO .....2<sup>ND</sup> DEFENDANT**

**RULING**

1. In the Notice of Motion dated 1<sup>st</sup> November, 2018, the Plaintiffs are seeking for the extension of validity of Summons. In support of the Application, the 2<sup>nd</sup> Plaintiff has deponed that after filing the Plaint herein, she was unable to trace the Defendants' physical address; that the validity of the Summons to Enter Appearance have expired and that it is in the interest of justice that the Summons be re-issued.
2. In his submissions, the Plaintiffs' advocate submitted that under Order 5 Rule 2 of the Civil Procedure Rules, the court has a wide discretion to determine cases in the best interest of justice; that in the interest of justice, the court should not punish the Plaintiffs for failing to file an Affidavit of Service detailing the attempts that were made to effect service and that in any event the Defendants will not suffer prejudice.
3. This suit was commenced by way of a Plaint dated 3<sup>rd</sup> September, 2014. On 9<sup>th</sup> March, 2015, the Deputy Registrar of this court issued to the Plaintiffs Summons to Enter Appearance. The said Summons were collected by the Plaintiffs' representative on 10<sup>th</sup> March, 2015. However, the same were never served upon the Defendants.
4. The record shows that the Plaintiffs' advocate was served by the court with a Notice to Show Cause dated 25<sup>th</sup> July, 2018 why the suit should not be dismissed for want of prosecution. It is only after receiving the Notice to Show Cause that the Plaintiffs filed the current Application.
5. Order 5 Rule 1 and 2 of the Civil Procedure Rules provides that a Summons (*other than a concurrent Summons*) shall be valid in the first instance for twelve (12) months. 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.
6. The Plaintiffs have not shown by way of an Affidavit the attempts they made to serve the Summons. Indeed, there is no evidence to show that any attempt was made to trace the Defendant for the purpose of serving her with the Summons.
7. Having not made any attempt to serve the Defendant, I find that the Plaintiffs have not satisfied the court that it is just to extend the validity of the Summons that were issued more than three (3) years ago. Indeed, considering that the Plaintiffs had to wait until after being served with the Notice to Show Cause why the suit should not be dismissed for want of prosecution to file the current Application, I find that this suit is ripe for dismissal.
8. For those reasons, I find no merit in the Plaintiffs' Application dated 1<sup>st</sup> November, 2018. Consequently, the Application dated 1<sup>st</sup> November, 2018 is dismissed with costs. The Summons to Enter Appearance having expired, the entire suit stands dismissed with no order as to costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 14<sup>TH</sup> DAY OF JUNE, 2019.**

**O.A. ANGOTE**

**JUDGE**