

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 409 OF 2013

SILAS KIPTUI KIPCHILLAT.....PLAINTIFF/RESPONDENT

VERSUS

DAUDI KIPTUGEN.....DEFENDANT/APPLICANT

RULING

The application before court is dated 28th November, 2018. The applicant seeks orders that the suit herein be dismissed with costs to the defendant. The application is based on the annexed affidavit of David Kiptugen and grounds that the plaintiff filed the plaint together with summons dated 12th August, 2013. The plaintiff never served the summons dated 12th August, 2013 upon the defendant when the summons was re-issued on 23rd July, 2008.

After expiry of the summons issued on 12th August, 2013 upon the defendant, there was no order extending the same. No application was made to extend the summons. The court ought to dismiss the suit for expiry of summons. The application is supported by the affidavit of Daudi Kiptugen that reiterates to grounds of the application.

The plaintiff's response is that the honourable court has never notified the plaintiff to collect summons for service. Failure to notify the plaintiff, the provision on the time limits remain in operation until notification. The original summons has never been collected, therefore, time for service cannot commence to run. He states that time can only run where the court has issued notification to collect summons or summons have been collected.

The plaintiff states that the court should do substantive justice and consider that land is emotive matter.

I have considered the application, supporting affidavit and the replying affidavit and do find that the summons to enter appearance was issued on 12th day of August, 2013 when the same was sealed by the Deputy Registrar. The plaint was filed prior to the summons on the 6th August, 2013.

The summons was re-issued on the 23rd July, 2018. The firm of Bundotich Korir Advocate was served on 25th July, 2018. The Memorandum of Appearance was filed on 17th October, 2018 and defence filed on 25th November, 2018.

I have considered the submissions of parties and do find that the summons was valid for 12 months beginning with the date of issue. There was no order extending the validity of service. There is no remark on the summons extending the same. No affidavit has been shown indicating that there was any attempt to serve the summons.

According to Order 5 Rule 6, it was the duty of the plaintiff to collect the summons within 30 days of issue or notification whichever is later, failure of which, the suit abates. The implication of the above is that the suit abated after the expiry of 30 days of issue. However, it was imperative for the deputy Registrar to notify the plaintiff that the summons was signed. There is no indication that the same was done.

It is strange that the plaintiff took more than 4 years to pursue the summons to enter appearance. To move forward, and for interest of justice, the court validates the summons issued 23rd May, 2018 and the memorandum of appearance and defence filed by the defendant. The reply to defence filed on 3rd December, 2018 is also hereby validated. Parties to take directions as legally required. Costs in the cause.

Orders accordingly.

Dated and delivered at Eldoret this 10th day of September, 2019.

A. OMBWAYO

JUDGE