



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CASE NO. 690 OF 2017

(formerly Machakos ELC No. 101 of 2010)

LAWRENCE NGINYO KARIUKI.....PLAINTIFF

VERSUS

THE ATTORNEY GENERAL AND 24 OTHERS.....DEFENDANT

RULING

The application before Court for determination is the Plaintiff's ex parte Notice of Motion dated the 19th May 2011 seeking the following orders:

- a) Spent.
- b) The validity of Summons to Enter Appearance herein dated the 27th May, 2010 be extended for a further period of 12 months.
- c) The costs of this application be in the cause.

The application is premised on the grounds which are summarized that after filing the suit and before Summons to Enter Appearance (STEA) were served upon the Defendants, the Land Registrar Kajiado wrote to the Plaintiff's advocates summoning them including the Plaintiff for a meeting to chart ways of resolving the survey anomaly that precipitated the dispute herein. The negotiations did not yield positive results and the Plaintiff's advocates misplaced the STEA and was not able to trace them. Further that the validity of the STEA was to lapse on 26th May, 2011, which if not extended would render the Plaintiff's suit abated.

It is supported by the affidavit of STANLEY KIHICO MUTUNGU who is the Advocate for the Plaintiff.

On the 24th May, 2018 Mr. STANLEY KIHICO MUTUNGU who is the Counsel for the Plaintiff submitted that he was seeking leave of Court to extend the STEA to enable him serve all the Defendants except for 1st, 5th, 7th, 21st and 24th Defendants who had already been served.

The only issue to determine is whether the summons to enter appearance issued on 27th May, 2010 should be extended to enable the Plaintiff effect service upon all the Defendants except the 1st, 5th, 7th, 21st and 24th who had already been served.

Order 5 Rule 2 (1) and (2) of the Civil Procedure Rules, 2010 provides as follows:- “ **2 (1) A summons (other than a concurrent summons) shall be valid in the first instance for twelve months beginning 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 the concurrent summons. 2 (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 it is satisfied it is just to do so.**”

I note the suit involves a boundary dispute, which arose after the subdivision of land parcel number NGONG/NGONG/525 to NGONG/NGONG/1950 that was again subdivided into smaller plots. I note the Defendants' who are yet to be served with STEA acquired the plots whose boundaries are in dispute herein. I note the Plaintiff lodged the instant application to extend the validity of the STEA before the same expired but the application had been pending for almost eight (8) years.

Order 5 rule 1 and 2 of the **Civil Procedure Rules** stipulates 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'

In the case of **Elegant Colour Labs Nairobi Limited vs Housing Finance Company (K) Limited & 2 Others [2010] eKLR**, Onyancha J held that:-

“ It seems to me proper and correct to say that extension of Summons aforesaid can only logically be made while the original summons is still valid. If the original summons is left to expire, in my view it would be legally impossible to extend it when it has so expired and therefore ceased to exist...the summons under the said order which have capacity to be extended by the court on the application by the Plaintiff, are the summons that are still valid. This means an application to extend can only be made within the duration of 12 months under Rule 1 fore cited or under any duration allowed in the extension of original summons...”

In relying the provisions of Order 5 rules 1 & 2 of the Civil Procedure Rules and being persuaded by the aforementioned judicial authority, I find that since the Applicant sought the extension of the validity of the STEA before the same expired, it is in the interest of justice that the said STEA dated the 27th May, 2010 were extended for a period of one year to enable the Plaintiff effect service upon the 2nd, 3rd, 4th, 6th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 22nd, 23rd and 25th Defendants respectively.

I note that whatever orders made by this Court will affect the Defendants who are yet to be served. And no prejudice will be occasioned to the 1st, 5th, 7th, 21st and 24th Defendants who had already been served, if the validity of said STEA were extended.

I find the instant application merited and allow it.

Dated signed and delivered in open court at Kajado this 11th day of July, 2018.

CHRISTINE OCHIENG

JUDGE