



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 566 OF 2014

FRANCIS GIKONYO THIRU

ESTHER NJERI GITAGIA

(Suing as the Administrators of the Estate of the late

SIMON THIRU KAMENWA.....PLAINTIFFS

VERSUS

GEORGE NGUGI THIRU.....1ST DEFENDANT

LEONARD GATHECA KANYIRI.....2ND DEFENDANT

SAMUEL KAMANI KUURI, KIMATHI LEONARD NJIRU

SAMUEL NGANGA MBIRUIRU

(Sued on their own Behalf and on behalf of

Kenyu Na Kenyu Self Help Group).....3RD DEFENDANT

JAMES RUO WAWERU.....4TH DEFENDANT

RULING

The Plaintiff seeks reissue of the summons to enter appearance in respect of the 3rd and 4th Defendants through the application dated 28/6/2017. It is supported by the affidavit of Victoria Wambua. The plaint was amended in 2015 to join the 3rd and 4th Defendants. Summons to enter appearance were issued on 22/5/2015. The Plaintiff has made diligent efforts to trace these Defendants for service without success. The summons expired on 26/5/2016. The Plaintiffs filed the application dated 23/5/2016 seeking to extend the validity of the summons but by the time it came up for hearing the summons had expired.

The applicant relied on **Mombasa HCCC No. 117 of 2012 Gulam Rasul Murdat V. Datma Enterprises Ltd** in which the Judge referred to the decision of Okwengu J. in **James Muniu Muchere V. National Bank of Kenya Ltd [2010] eKLR** where she stated that reissue of summons to enter appearance implies that the original summons to enter appearance has been overtaken or substituted by new reissued summons to enter appearance. This applies where the original summons is no longer valid or was destroyed or is not available for some other reason, and the suit has not been dismissed under Order 5 rule 1(7) of the Civil Procedure Rules.

Order 5 Rule 2 (7) empowers the court to dismiss a suit without notice at the expiry of 24 months from the issue of the original summons if no application to extend the validity of the summons has been made.

The summons ought to be reissued so that the 3rd and 4th Defendants can be served to attend court. The court allows the application dated 28/6/2017. Costs shall be in the cause.

The Plaintiff is directed to prepare summons within 10 days for signing by the Deputy Registrar. The summons must be collected and served within 30 days of the date the summons are signed.

Dated and delivered at Nairobi this 12th day of October 2017.

K. BOR

JUDGE

In the presence of: -

Mr. Nderitu the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant