



**Twiga Chemical Industries Limited v Game Ranching Limited & 3 others (Environment & Land Case 189 of 2018) [2024] KEELC 5781 (KLR) (29 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5781 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 189 OF 2018  
CA OCHIENG, J  
JULY 29, 2024**

**BETWEEN**

**TWIGA CHEMICAL INDUSTRIES LIMITED ..... PLAINTIFF**

**AND**

**GAME RANCHING LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**JOHN NORMAN HOPCRAFT ..... 2<sup>ND</sup> DEFENDANT**

**LADY CLAIRE GEORGINA HESKETH (SUED AS LEGAL ADMINISTRATORS  
OF THE LATE RIGHT HONOURABLE CHRISTIAN MARY BARONESS  
HESKETH) ..... 3<sup>RD</sup> DEFENDANT**

**LORD THOMAS ALEXANDER HESKETH (SUED AS LEGAL  
ADMINISTRATORS OF THE LATE RIGHT HONOURABLE CHRISTIAN  
MARY BARONESS HESKETH) ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before Court for determination is the Plaintiff's Notice of Motion Application dated the 23<sup>rd</sup> January, 2024 brought pursuant to Section 1A, 1B, 5 and 63(e) of the *Civil Procedure Act* as well as Order 5 Rule 2, 21, 22, 25, 27 and Order 51 Rule 1 of the *Civil Procedure Rules* as well as Article 159 (2) (d) of the *Constitution*. The Plaintiff seeks the following Orders:-

1.

- (a) The Validity of Summons to Enter Appearance against the 4<sup>th</sup> Defendant be extended for a further period of 12 months.
- b) Alternatively



- c) This Honourable Court be pleased to re-issue Summons to Enter Appearance for service upon the 4<sup>th</sup> Defendant.
  - 2) This Honourable Court be pleased to grant leave to the Plaintiff/Applicant to effect service of Summons and all other incidental process upon the 4<sup>th</sup> Defendant outside the jurisdiction of this Honourable Court.
  - 3) This Honourable Court be pleased to grant leave to the Plaintiff/Applicant to effect service of Summons and all other incidental process upon the 4<sup>th</sup> Defendant by way of substituted service by way of registered post at 15 Cranley Place London SW7 3AE, Rayner Essex Tavistock House South Tavistock Square London WC1H9LG and 1Kensington Gate London W8 5NA and by advertisement in a newspaper of wide circulation in London.
  - 4). Costs of this application be provided for.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Anantharaman Ramamurthy, its Managing Director, where he explains that the Plaintiff was granted leave to file and serve Amended Plaint following a Ruling delivered on 21<sup>st</sup> March, 2022. He confirms that their process server has been able to serve the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants but was unable to locate the 4<sup>th</sup> Defendant. He explains that they have now been able to locate the 4<sup>th</sup> Defendant's address through the Will of the late Baroness Hesketh and seek extension of summons to serve him vide substituted service.
  3. The 1<sup>st</sup> Defendant opposed the instant application by filing Grounds of Opposition where it contends that type of substituted service sought by the Plaintiff contravenes Order 5 Rule 29 of the [Civil Procedure Rules](#) on service of summons outside the jurisdiction of this Court. Further, that other than the Will written six (6) decades ago, there is no evidence before Court of the presence of the 4<sup>th</sup> Defendant within the Jurisdiction of the United Kingdom.
  4. The Application was canvassed by way of written submissions.

### **Analysis and Determination**

5. Upon consideration of the instant Notice of Motion Application including the Supporting Affidavit, Grounds of Opposition and rivalling submissions, the only issue for determination is whether Summons to Enter Appearance issued on 19<sup>th</sup> July, 2022 which expired on 19<sup>th</sup> July, 2023 as against the 4<sup>th</sup> Defendant, should be reissued.
6. The Plaintiff has sought for extension of validity of summons to enter appearance (STEA) as against the 4<sup>th</sup> Defendant as well as substituted service upon him. The Plaintiff explains that they only managed to serve the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants but the summons to enter appearance issued on 19<sup>th</sup> July, 2022 expired on 19<sup>th</sup> July, 2023 before they were able to locate and serve the 4<sup>th</sup> Defendant. Further, that their process server's efforts to locate him proved futile. The 2<sup>nd</sup> Defendant opposed the instant Application. On extension of validity of summons or reissuance, Order 5 Rule 2 (1) and (2) of the [Civil Procedure Rules, 2010](#) provides as follows:-

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- (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) 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.”

7. Further, Section 95 of the *Civil Procedure Act* stipulates that:-

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time enlarge such period, even though the period originally fixed may have expired.”

8. I note the fulcrum of the dispute herein revolves around ownership of LR NO. 7590/4, trespass as well as a claim for adverse possession. I note all the Defendants’ except the 4<sup>th</sup> Defendant have been served. The Plaintiff has explained the delay in serving the 4<sup>th</sup> Defendant. I note the Plaintiff lodged the instant application to extend the validity of the STEA after the same had expired. In the case of *Elegant Colour Labs Nairobi Limited v 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...”

9. While in the case of *Trident Insurance Co. Ltd V Underwriting Services & Insurance Brokers Ltd* (2017) eKLR, the Court while dealing with an issue of extension of validity of summons, held as follows:-

“In principle therefore, the court has the discretion to either extend the validity of summons or to order for the re-issue of summons even if the original summons had already expired. But when the court was asked to either extend the validity of summons or to order for the re-issue of summons, it is imperative that the court exercises its discretion in a judicious manner. A plaintiff who had not provided a reasonable explanation for his failure to serve the original summons within the duration of validity, should not be granted either the extension or re-issuance of the summons. Similarly, if the result of either extending the validity of the summons or of ordering that the summons be re-issued would be a deprivation of a Defence which would have otherwise accrued to the defendant, it would be unjust to allow the application. In this case, it does appear that the claim is founded on contract, and that it dates back to the year 2010. But there were also claims that appear to arise until the year 2013. Therefore, whilst it might be possible that parts of the claim might be time-barred, I hold the considered view that the defendant would not be prejudiced if faced with the said claim. I say so because it would still be open to the defendant, if it was so minded, to put forward the Defence of limitation. I also find that the plaintiff has provided an adequate and plausible explanation for the delay in serving the defendant with the original summons. In the case of *Duncan Mwangi Kiora v Valley Bakery Limited & Others* [2011] eKLR, Dulu J. extended the validity of a summons which had expired for more than a year. It is my



considered opinion that although the period of over 2 years, since the original summons was issued, is long, it does not, of itself constitute a bar to the re-issuance of the summons.”

10. Based on the facts before me while relying on the legal provisions set out under Order 5 Rules 1 and 2 of the Civil Procedure Rules and being persuaded by the aforementioned judicial authorities, I opine that since the summons had expired in July, 2023, the only recourse is to order for a re-issuance of the same. In the circumstances, I find that the Plaintiff’s reasons advanced for the delay in serving the 4<sup>th</sup> Defendant are plausible. Further, I note there is a claim of adverse possession over the suit land and it would be pertinent for all the Defendants’ to file their respective defences to enable the Court make a proper determination of the issues herein. It is trite that under Article 159(2) (d) of the Constitution, the Courts are encouraged to focus on substantive justice and not procedural technicality. In the interest of justice, I direct that fresh STEA be reissued for twelve (12) months, to enable the Plaintiff serve the 4<sup>th</sup> Defendant.

11. On the prayer for service upon the 4<sup>th</sup> Defendant via substituted service, I wish to refer to Order 5 Rule 29 of the Civil Procedure Rules which provides that:-

“Where leave is given to serve notice of summons in a foreign country to which this rule may by order of the Chief Justice from time to time be applied, the following procedure shall be adopted— (a) (b) (c) (d) (e) the notice to be served shall be sealed with the seal of the High Court for use out of Kenya, and shall be forwarded by the Registrar to the Minister for the time being responsible for Foreign Affairs together with a copy thereof translated into the language of the country in which service is to be effected, and with a request for the further transmission of the same through the diplomatic channel to the Government of the country in which leave to serve notice of the summons has been given; and such request shall be in Form No. 7 of Appendix A with such variations as circumstances may require; the party bespeaking a copy notice of summons for service under this rule shall, at the time of bespeaking the same, file a praecipe in Form No. 8 of Appendix A; an official certificate, or declaration upon oath, or otherwise, transmitted through the diplomatic channel by the government or court of a foreign country to which this rule applies, to the High Court shall, provided that it certifies or declares the notice of the summons to have been personally served, or to have been duly served upon the defendant in accordance with the law of such foreign country, or words to that effect, be deemed to be sufficient proof of such service, and shall be filed on record as, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf; where an official certificate or declaration, transmitted to the High Court in the manner provided in paragraph (c), certifies or declares that efforts to serve a notice of summons have been without effect, the court may, upon the ex parte application of the plaintiff, order that the plaintiff be at liberty to bespeak a request for substituted service of such notice; and such order shall be in Form No. 9 of Appendix A, with such variations as circumstances may require; a request for substituted service of a notice of summons under this rule may be spoken by the plaintiff at the department where summonses are issued upon filing a praecipe in Form No. 8 of Appendix A, and the notice of summons and copy of the same, and the order, shall be sealed and transmitted to the Minister in the manner aforesaid together with a request in Form No. 10 of Appendix A, with such variations as circumstances may require.”

12. In the foregoing, while relying on the provisions as set out in Order 5 Rule 29 of the Civil Procedure Rules governing service of summons outside the jurisdiction of this court, I will decline to allow the



Plaintiff to serve the 4<sup>th</sup> Defendant via substituted service as sought. I direct that the Plaintiff does adhere to the aforementioned legal provisions to serve the 4<sup>th</sup> Defendant.

13. It is against the foregoing that I find the instant Notice of Motion Application partially successful and will only allow prayer No. 1 (a) and (b) only, but decline to grant prayers No. 2 and 3.

14. Costs will be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 29<sup>TH</sup> DAY OF JULY, 2024**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ms. Kethi Kilonzo for 1<sup>st</sup> Defendant

No appearance for Plaintiff

No appearance for 2<sup>nd</sup> – 4<sup>th</sup> Defendants

Court Assistant – Simon/Ashley

