**Chesoni and another v Silverstein and another**

**Date of judgment:** 10 March 2006

**Case Number:** 1444/02

**Before:** Visram J

**Sourced by:** LawAfrica

**Summarised by:** R Rogo

*[1] Civil practice and procedure–Summons to enter appearance – Failure to apply for extension of*

*validity of summons – Whether the Registrar can re-issue summon that have already expired – Effect of defendant having entered appearance.*

**Editor’s Summary**

The applicant sought to strike out the summons and the plaint on the ground that the same were not served on time.

The original summons were issued on 6 September 2002. They were collected from the registry but not served upon the defendant. However on 11 February 2005, the plaintiff’s advocate wrote to the Deputy Registrar requesting reissuance of the summons as the original ones had expired. The Registrar issued fresh summons to the plaintiff giving rise to the present application.

**Held** – The original summons, once issued, is valid for a period of twelve months. Where service has not been effected within this period, the court may extend its validity for a specified period. However, the application for extension of its validity must be made during the lifetime of the summons, not after it has expired. Once its validity has expired, there is nothing to extend. It is dead. You cannot breathe new life into it nor reissue it.

The Civil Procedure Rules do not allow reissuing of summons. The rules only provide for extension of the validity of the summons but it is not possible to extend a summons that has expired. (*Uday Kumar*

*Chandulal Rajani v Charles Thaithi* civil appeal number 85 of 1996; *Kalsi v Waitahu* [2001] KLR 5817

(HCK) followed; *Shah v Investments and Mortgages Bank Limited* [2001] 1 EA 274 distinguished.

The plaint and the summons are inseparable. Without the summons, the defendant cannot be called upon to answer the claims in the plaint.

The fact that the defendant entered appearance could not validate an invalid summons. (*Macfay v*

*United African Limited* [1961] 3 All ER 1169; *Uday Kumar Chandulal Rajani v Charles Thaithi* civil

appeal number 85 of 1996 followed.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Kalsi v Waitathu* [2001] LLR 5817 (HCK) – **D**

*Mobil Kitale Service Station v Mobil Oil Kenya Limited* [2004] KLR

*Rajani and others v Thaithi* [1996] LLR 443 (CAK)

*Raju Investments Limited v Vipin Chandulal Rajani* High Court civil case 3320 of 1991 (UR)

*Shah v Investment and Mortgages Bank Limited* [2001] 1 EA – **D**

*Stephen Karuoya Mwangi v Joyce Mumbi* High Court civil case 77 of 2002 (UR)

*Uday Kumar Chandulal Rajani v Charles Thaithi* [1996] LLR 443 (CAK) – **D** and **F**

***United Kingdom***

*Macfay v United African Limited* [1961] 3 All ER 1169 – **F**