**Kenya Industrial Estates Limited v Ogana and another**

**Division:** Milimani Commercial Courts of Kenya at Nairobi

**Date of ruling:** 22 January 2004

**Case Number:** 1259/01

**Before:** Kasango J

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*Civil procedure – Summons – Extension of validity of summons – Party waiting for summons to expire*

*before applying for extension – Whether summons may be extended – Application not indicated as* ex

parte *– Whether application valid if argued* ex parte *– Order V, rule 1 – Civil Procedure Rules.*

**Editor’s Summary**

The Plaintiff brought an application seeking the enlargement of validity of two summons to enter appearance. The summons had been issued on 13 August 2001 and as at the time of presentation of the Plaintiff’s application, they had already expired. The Plaintiff’s application indicated that it would be served on the Defendants but was argued *ex parte*. There was no indication of any attempts made by the Plaintiff to serve the Defendants.

**Held** – The Plaintiff’s failure to indicate that the application was *ex parte* would on its own defeat the application because the court in entertaining an application was guided by the prayers sought by a party. For a plaintiff to obtain an order of extension of summons he had to prove to the court that he had attempted to serve the Defendants and give evidence as to the result of those attempts. The summons in this matter had expired in August 2002 and were incapable of extension (*Rajjani and others v Thaithi* [1996] LLR 443 (CAK) applied). Application dismissed.

**Case 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)

*Rajjani and others v Thaithi* [1996] LLR 443 (CAK) – **AP**