

## **BRIEF SUMMARY ARTICLE ON THE ISSUING AND SERVICES OF SUMMONS TO THE OTHER PARTY IN CIVIL CASES:**

### **KEY AREAS TO COVER:**

- The Concept of summons itself
- How are the summons served to the other party?
- Why is there a delay by the other party sometimes when issued with summons?
- What is the way forward in handling such situation?
- Conclusion.

### **1.0.The Concept of summons itself.**

Generally, Summons can be defined as a call by an authority (i.e. court) to appear, come or do something. Under **Order V of the Civil Procedure Code Cap 33 RE 2019** generally the said order covers several different provisions relating to issue and service of summons. The main focus of this Article will deal with issuing of summons to the other party as far as civil cases are concerned.

### **1.1 How are the summons served to the other party?**

Serving of summons to the other party as a general rule can only happen if there is a suit already commenced before the court of law. (this is according to **Order V rule 1 of the Civil Procedure Code Cap 33 RE 2019**). The mode of service of the summons to the other party has been provided for under **Order V rule 6 of cap 33 R.E 2019**. Whereas the said provision of the law has stated that:

*“Service of summons shall be made within fourteen days after it has been received by delivering or tendering a copy thereof signed by the judge, magistrate or such officer as the Chief Justice may appoint in this behalf and sealed with*

*the seal of the Court”*

Furthermore, the provisions of **Order V rule 17 of the Civil Procedure Code cap 33 RE 2019** has also made some addition on the concept of service of summons by way of post towards another party to a case. The law has stated that:

*“Where the court is satisfied that to require a summons to be served on a defendant in the ordinary manner or by substituted service may cause undue delay and that the summons may more conveniently be served by post, the court may order that the summons be served by post”*

With that being the case there are those circumstances whereas summons may be required to be issued towards the other party to a suit so as to show cause of something in relation to the suit or as to why he/she doesn't want to perform his/her respective duty in relation to the suit he/she is facing before the court of law. For example, there is a case which is at the execution stage on one hand, and on the other hand you have a Judgment debtor whom fails to perform his obligation towards the decree holder in relation to the specific provisions of the law dealing with execution matters in civil cases. Under such circumstances the said person (Judgment debtor) may be required to give reasons as to why he doesn't want to fulfil his obligation towards the decree holder but this can, happen if the decree holder prays before the court of law determining the said execution of decree to issue the summons to show cause towards the Judgment debtor. (refer **Order XXI rule 20 of the Civil Procedure Code Cap 33 RE 2019**)

### **1.2. Why is there a delay by the other party sometimes when issued with summons?**

The following are some reasons behind the delay of another party to a case when issued with summons as follows:

1. **Hardship in finding the said party/ the other party not found easily within the local limits to which the court of law issued such summons.** Under such circumstances the Civil procedure code has provided a clear procedure on how to deal with

such situation when a party (defendant) is not easily found and the summons are intended to be served upon such party as provided for under **Order V rule 13** of the said law (**Cap 33 RE 2019**) which states:

*“Where the serving officer, after using all due and reasonable diligence, cannot find the defendant and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall within fourteen days of affixing such copy then return the original to the court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.”*

Despite the fact that much effort is done in accordance with the above-mentioned provision of the law still the said problem isn't fixed to that extent as to what the law provides since not each and every party upon being served with the summons might be able to show up in court as required. This is due to the fact that some parties might be facing economic hardship so it's not quite easy for them to move from their respective premise easily till reaching to court as required, others might be faced with poor infrastructure problems, as well as communication too so it's not also easily to arrive on court on time as required upon served with summons.

2. **Avoidance of court premises**, in a sense that there are those people whom are a party to a certain case before the court of law and when summons are issued to them so as to appear before the court of law they may just end up refusing to show up even though, in actual sense the summons was issued to them. One of the reasons behind this habit is the issue of fear since mostly not each and every person is used that much to the court's environment.

3. **Errors in the summons document**, another reason behind this concept of delay by the other party in receiving summons issued to them so as to appear before the court of law is the issue of an error which is done sometimes when preparing the said summons by the court clerks or even any other court official with mandate to prepare the said summons. A very good example in accordance with this reason as mentioned from the above is that I was once assigned a task in one of the law firms which I was working as an intern to serve a summons to show cause in one of the cases that was at its execution stage and the said summons were supposed to be served towards the Judgment debtors but when I went to the Judgment debtor's place of work I didn't find them since I was told that they were not around at that particular time and henceforth I had to go back to the law firm and give them feedback and that is where now the firm decided to use a court process server whom succeeded to serve the said Judgment debtors with the summons to show cause but what most of us didn't notice (myself, the court which issued such summons, members of the law firm I was working as an intern and the court process server) is that the said summons had an error on the date of which it did require the said Judgment debtors to appear and the said error was only noticed by the Judgment debtors themselves.

### **1.3.What is the way forward in handling such situation?**

As previously discussed, the above mentioned three reasons are the ones which in most cases in my opinion set a block towards the other party from getting summons on time as far as civil cases are concerned. Having said so let's take a look at what is the way forward to deal with such situation.

- 1) **The need to have independent rules and regulations dealing with serving of summons by electronic means**, in doing so in one way or another and by taking into consideration the current world that we are living nowadays it's a world of science and technology (21<sup>st</sup> century). Thus the need to have this independent legislations will be able to not only provide a guideline in the serving of summons towards the other party but it will also list the means in which summons can be served to the other party for example be it by way of email, WhatsApp, telegram or any other electronic mean or social media application. despite the

fact that the newly amendments of the **Civil procedure code cap 33 RE 2019** recognizes the use of electronic means in serving court documents but to some extent still 99% of most of our court systems still use normal means of serving court documents such as summons to the other party. But also, there are still some people living especially in the rural areas not all of them have quite access to the said electronic devices so in such circumstance sometimes it's not quite easy to cope with the current universe of science and technology.

- 2) **Education provision on the importance of summons and the court itself**, this is due to the fact the stakeholders whom are experts in court matters, the members of the bench as well as members of the bar need to prepare a seminar or even a debate or use the law day sessions in educating the people especially the laypersons on the importance of serving summons to the other party since it's their duty to do so. Furthermore, in doing so it will be able to create a sense of doing away with the issue of being a layperson towards the said persons whom are lay but also enable such persons to obey the courts orders in relation to the serving of the said summons towards them.
- 3) **Proper drafting of the summons by the respective court officials with mandate to do so**, as I have previously explained in one of the real scenarios that I once faced when I was assigned to serving summons to the other party to a case by the firm which I was working as an intern, I didn't notice on the error which was in the said document, neither did the maker of it notice the error, nor the respective firm partner whom assigned me with the said task of serving the summons to the other party to the case. This error was later on noticed by the other party alone that did receive the said summons. The said error was based on wrongful cited date of appearing in court. Therefore my main point of emphasis with regards to the said example which I have provided is that if the summons are properly drafted without containing any error or defectiveness in them then once if they are served to the other party to a case requiring such party to appear then there will be no such thing as unnecessary delay by them in such circumstances because the summons itself will have provided a clear guideline on what such other party is required to do upon receiving it.

## **CONCLUSION:**

To sum up, I conclude by emphasis and encouraging all the people especially the lay persons they should know that the serving and issuing of summons is a requirement provided for by the law and henceforth whenever they are required in the court premise to appear in as far as the nature of the case that is before such court is concerned they such persons should appear since its an order form the court of all requiring them to do so and hence avoid any unnecessary disturbance with the courts of law.