

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 2 OF 2019

GRACE WACHINGA MUCHIRI

(Suing as Legal Representative of estate of John Muchiri Wanyeki).....PLAINTIFF/APPLICANT

VERSUS

NEWTON KOECH.....1ST DEFENDANT

MORRIS WANG'OMBE NDERI.....2ND DEFENDANT

RULING

1. The application dated 1/10/2019 seeks orders that:

1. The Honourable Court be pleased to grant leave for the Summons and Amended Plaint herein to be served upon the 1st and 2nd Defendants by substituted service through an advertisement in any one of the local Daily Newspapers.

2. The Honourable Court be pleased to set the time limit within which the 1st and 2nd Defendants is to enter appearance upon such service.

3. The costs of this Application be in the cause.

2. During the hearing of the application, the Applicant also orally sought leave for the extension or re-issuance of the summons herein. It is explained in the affidavit in support that all efforts made to serve the Defendants have not borne any fruit.

3. Order 5 rule 2 Civil Procedure Rules gives the court the discretion to extend the validity of the summons from time to time if it is satisfied it is just to do so (**See for example James Muniu Muchere v National Bank of Kenya Ltd [2010] eKLR and Tropical Foods International & another v Eastern and Southern African Trade Development Bank & another [2017] eKLR**).

4. The court record reflects that the Summons to Enter Appearance were issued on 14/1/2019. The same lapsed before service.

5. The affidavit sworn by the process server reflects the efforts made to serve the Defendants which efforts were not successful. The Applicant's counsel explained in court that service can be effected through advertisement in the **Daily Nation** newspaper.

6. With the foregoing, I allow the application with costs in cause Service to be effected through advertisement in the **Daily Nation** newspaper. The Defendants to enter appearance within 21 days of the service.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JUNE, 2021

B.THURANIRA JADEN

JUDGE