



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAROK**

**CIVIL CASE NO. 3 OF 2018**

**JULIUS SAIKAKWET NCHOE.....PLAINTIFF**

**VERSUS**

**EQUITY BANK LTD.....1<sup>ST</sup> DEFENDANT**

**AGUNJA AUCTIONEERS.....2<sup>ND</sup> DEFENDANT**

**SAMUEL KITITA KAIMOE.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. The firm of Kamwaro and Company Advocates were instructed to act for the plaintiff. They failed to get further instructions to act in the matter due to the inability to get in touch with him. As a result, they have filed this application pursuant to the provisions of Order 5 Rule 17 of the 2010 Civil Procedure Rules and section 3A of the Civil Procedure Act (Cap 21) Laws of Kenya, seeking leave of this court to serve him by way of substituted service namely to be served by registered mail through his last known postal address; with a view of ceasing to act for him.

2. In support of their application, the said advocates have supported their application with a ten paragraphs supporting affidavit. In that affidavit, Mr. Martine Ole Kamwaro has deponed to the following major matters. He has averred that the plaintiff has made it difficult for them to act competently on his behalf. He has also averred that the plaintiff has persistently neglected to give them instructions and has totally refused to communicate with them. Furthermore, he has averred that his attempts to urge him to avail them the necessary instructions have proved futile and has completely refused to respond to his calls. He has also averred that the plaintiff has been unreachable on the cell phone that he gave him.

3. He has also averred that he is unable to continue appearing for the plaintiff without the requisite instructions. As a result, the firm filed an application dated 4<sup>th</sup> March 2019 to cease acting for the plaintiff. Additionally, he has further averred that it has proved totally difficult and frustrating to trace him for service of the court processes.

4. Finally, Mr. Kamwaro has urged the court to grant them leave to serve the plaintiff with the application dated 4<sup>th</sup> March 2019, through his last known postal address being P. O. Box 27-20500, Narok.

5. The application is unopposed.

6. I find the affidavit evidence of Mr. Kamwaro to be credible. As a result, I find that the plaintiff has failed and /or neglected to give further instructions to Mr. Kamwaro. The plaintiff cannot be reached by his counsel on record.

7. The upshot of the foregoing is that I do hereby grant the applicant's prayer Nos. 1, 2 and 3 of the notice of motion dated 14<sup>th</sup> April 2019.

**Ruling dated, signed and delivered at Narok this 20<sup>th</sup> day of June 2019, in the presence of Mr. Yenko holding brief for Mr. Kamwaro and in the absence of the defendants.**

**J. M. Bwonwonga**

**Judge**

**20/6/2019**