



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**CIVIL CASE NO. 23 OF 2018**

**MBOE SAMBU RESOURCES LTD.....PLAINTIFF**

**VERSUS**

**STEPHEN SAMWEL PAINO.....1<sup>ST</sup> DEFENDANT**

**FRANCIS STRANGE.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. Pursuant to the provisions of Order 17 (1) (4) of the 2010 Civil Procedure Rules, the plaintiff through its *ex parte* notice of motion, seeks leave of the court to serve summons upon the defendant by way of advertisement in the Daily Nation newspaper or any other newspaper of national circulation. It also seeks an order to be made for the provision of costs.

2. The application is supported by the four grounds set out on the face notice of the *ex parte* notice of motion. The following are the major grounds. Summons were issued by this court on 8<sup>th</sup> November 2018 but they have not been served to date. All efforts to find out the location of the defendants in order to serve them with the summons have proved futile. The defendants while in hiding filed a judicial review application being Kisii High Court JR No. 1 of 2018 to stop their prosecution, but the application was dismissed.

3. Furthermore, the application is supported by a nine paragraphs supporting affidavit. He has averred to the following major matters. The plaintiff sued the defendants in respect of a liquidated sum of shs 50,000,000, being the cost of its damaged mining equipments and items that were stolen. Summons to serve the defendants were issued on 8<sup>th</sup> November 2018 by this court. The plaintiff has not been able to serve the defendants as it has not been able to trace them. The other matters are a replica of the grounds in support of the *ex parte* motion.

4. The application is unopposed.

5. I find the affidavit evidence of the plaintiff to be credible. I further find that it has not been possible to serve the defendants as it has not traced them.

6. I therefore grant the plaintiff's application in terms of prayer No 1 of its *ex parte* notice of motion.

7. There will be no order as to costs.

Ruling dated, signed and delivered in open at Narok this 20<sup>th</sup> day of June 2019 in the presence of Mr. Langat holding brief for Mr. Njiru for the plaintiff.

**J. M. Bwonwonga**

**Judge**

**20/6/2019**