



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**E.L.C. NO. 532 OF 2013**

**SIMON KANDIE & OTHERS.....PLAINTIFFS**

**6VERSUS**

**RICHARDSON KIPKOECH**

**BUNDOTICH & OTHERS.....DEFENDANTS**

**RULING**

1. On 2 March 2016, Counsel for the 1st & 2nd defendants raised doubts as to whether the 5th & 6th defendants have been served. Mr. Opar, Counsel for the plaintiff stated that they have not yet served the 5th & 6th defendants. Mr. Olonyi then submitted that the suit should be struck out as against the 5th & 6th defendants since summonses had not been served since 2013. I presume this is under order 5 Rule 2. I then retired to consider this application.

2. I have carefully perused the record. I have seen an affidavit of service filed on 19 September 2013 showing that the 5th & 6th defendants were served. The matter has been proceeding on the basis that the 5th & 6th defendants were served pursuant to that affidavit of service. That affidavit of service states as follows in paragraphs 4 and 5:-

*(4) THAT on the same day (meaning 18 September 2013) I further proceeded to Village Park Hotel – Nakuru whereupon my arrival I met two officials of the 4th & 5th defendants with the 1st plaintiff to whom after introducing myself and also explaining the purpose of my visit, I effected service upon them at 12.20pm.*

*(5) THAT on the same day I further again called one of the officials of the 6th defendant Mr. Maina vide Telephone No. 0722 379 092 then we agreed we meet at Kencom House Nairobi that upon my arrival at Kencom House I met him to whom after introducing myself and also explaining the purpose of my visit I effected service upon him at 4.00pm”.*

3. So far, no appearance has been on behalf of the 5th & 6th defendants. They are described in the plaint as “companies registered as such within the relevant laws”. I take it that they are companies or corporations registered under the Companies Act (CAP 486) Laws of Kenya.

4. If that is the case, as it must be, then service ought to have been effected in accordance with Order 5 Rule 3 which is drawn as follows:-

*“3.Service on corporation:-*

*Subject to any other written laws where the suit is against a corporation the summons may be*

served:-

*(a) On the Secretary, Director or other Principal Officer of the Corporation, or*

*(b) If the Process Server is unable to find any of the officers of the corporation mentioned in Rule 3 (a)*

*(i) by leaving it at the registered office of the corporation,*

*(ii) by sending it by prepaid registered post or by a licensed courier service provider approved by the court to the registered postal address of the corporation, or*

*(iii) If there is no registered office and no registered postal address of the corporation, by leaving it at the place where the corporation carries on business, or*

*(iv) by sending it by registered post to the last known postal address of the corporation.”*

5. Service is said to have been effected upon same persons on behalf of the 5th & 6th defendants. They were said to be officials of the 5th & 6th defendants. However their capacity is not disclosed. It is not said whether they are Directors, Secretary, or Principal Officer or exactly what position they hold in these companies so as to declare them “officials” of the company.

6. Given this lacunae, it is unsafe to assume that the 5th & 6th defendants were properly served.

7. In my discretion, instead of having this suit dismissed, I order that they be served afresh and the validity of the summonses are extended to 30 June 2016 by which time service ought to have been effected.

8. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 17<sup>th</sup> day of March, 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :-**

Mr Opar present for plaintiff.

N/A on part of M/s Olonyi & Co. for 1<sup>st</sup> and 2<sup>nd</sup> defendants.

3<sup>rd</sup> defendant: Deceased

Mr. Katithi holding brief for Mrs Ndeda for 4th defendant.

N/A for 5th & 6th defendants.

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**