



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC MISC. APP NO. 31 OF 2021**

**MEGJI NANJI PATEL.....APPLICANT**

**VERSUS**

**RAKSHA PARESHKUMAR SHAH**

*(Executrix of The Estate of the late Amritlal Megji Shah).....1<sup>ST</sup> RESPONDENT*

**SURYAKALA MOTILAL MALDE**

*(executrix of the Estate of the late Motilal Meghji Multi Malde):.....2<sup>ND</sup> RESPONDENT*

**RULING**

The application is dated 2<sup>nd</sup> August 2021 and is brought under Sections 1A, IB & 3A of the Civil Procedure Act and Order 5 Rules 21 and 22B of the Civil Procedure Rules seeking the following orders;

1. That the Applicant be granted leave to serve the Summons to Enter Appearance, Originating Summons and Supporting Affidavit upon the Second Respondent out of the jurisdiction of this Honourable Court in England;
2. That further leave be granted to the Applicant to serve the Summons to Enter and Supporting Affidavit upon the Second Appearance, Originating Summons Respondent through her email address; and
3. That the costs of this application be provided for.

It is based on the grounds that the Second Respondent resides in London out of the jurisdiction of this Honourable Court. The First and Second Respondents are in breach of their obligations under the Agreement for Sale dated 17<sup>th</sup> January 2018 for the sale and purchase of the property known as Plot No. 913 Section VI Mainland North Mombasa. That the aforesaid property known as Plot No. 913 Section IV Mainland North Mombasa is situated in Mombasa within the jurisdiction of this Honourable Court and the agreement for sale in its respect was also entered into in Kenya and that this honourable court therefore has jurisdiction to hear and determine this matter.

This court has considered the application and submissions therein. The applicant seeks to serve the 2<sup>nd</sup> Respondent by electronic mail due to the fact that they reside in London out of the jurisdiction of this Court. The case of **Abu Chiaba Mohamed vs Mohamed Bwana Bakari & 2 Others (2005) eKLR** where the Court of Appeal held;

*“The decision clearly recognized that if personal service which is the best form of service in all areas of litigation, is not possible, other forms may be resorted to. Otherwise why would the Court have expected to be given reason or reasons why personal service was not effected? Why would the High Court and this Court have expected that some attempt at personal service be tried on the President and be shown to have been repelled? Lady Justice Khaminwa clearly recognized this aspect of the decision for she stated in her judgment at page 135 of the record of appeal:-*

*“In the Kibaki – Moi case the Respondent stated on oath that he was not personally served with the Notice of Petition either within 28 days after the date of publication of the result of the petitions (sic) as required by section 20 (1) (a) of the Act at all. However it was shown that the petition was served through the Gazette Notice as provided under Rule 14 (2). The facts are different in that case (sic) made no effort to personally serve the Respondent. In this case alternative methods were made to bring the notice to (sic) of the petition (sic) of the respondent knowledge but personal service proved impossible.”*

From the foregoing, a party must make effort to serve any process through personal service and that where personal service cannot be made then a party must seek the leave of Court to effect service by an alternative mode. In this case the 2<sup>nd</sup> Respondent does not reside in Kenya. I find that this application is merited and I grant the same as prayed. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 23<sup>RD</sup> DAY OF MARCH 2022.**

**N.A. MATHEKA**

**JUDGE**