



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO.167 OF 2008 (OS)

IN THE MATTER OF PLOT NO.20 MEASURING 40

**ACRES IN LAND REFERENCE NO.548 KERINGET, MOLO, OTHERWISE KNOWN AS
LAND TITLE NUMBER OLENGURUONE/KERINGET BLOCK 1/20**

BETWEEN

AARON KIPLANGAT KAMOING.....PLAINTIFF/APPLICANT

AND

MAJOR WILSON KOITABA1ST DEFENDANT/ RESPONDENT

JOEL KIBET KOECH.....2ND DEFENDANT/RESPONDENT

RULING

The application dated 22/11/2012 is made pursuant to provisions of Order V Rule 17 Civil Procedure Rules, and seeks that leave be granted to the plaintiff to effect service of summons upon the 2nd Defendant/Respondent, by way of substituted service through an advertisement in ANY of the local daily newspapers

This is because all efforts by the plaintiff to serve the 2nd defendant with the amended originating summons dated 18th November 2009 have not been successful. The plaintiff has not been able to establish the whereabouts of the 2nd defendant's place of business or residence.

In the supporting affidavit sworn by the plaintiff, he explains that he filed suit in the year 2008, in respect of land **No.Olenguruone/Keringet/Block 1/20** against the 1st defendant. After institution of the suit, he got to learn that the 1st defendant had transferred the same parcel of land to one **JOEL KIBET KOECH** as evidenced by a copy of the search certificate. So he enjoined the said **JOEL** as the 2nd defendant in the suit on 19th November 2009 by amending the originating summons, upon obtaining leave of court to do so.

The plaintiff has been unable to trace the 2nd defendant.

No affidavit demonstrating attempts at service on the 2nd defendant has been annexed. I think this is easy to understand, without an address of any sort to give a hint as to where to physically find the 2nd

defendant, then attempts at personal service would be only chasing after the wind. I make this observation fully aware that **Order V Rule 9(1)** provides that:-

"Wherever it is practicable, service shall be made on the defendant in person....."

I am satisfied that, given the scenario obtaining here, with almost zero information on where to locate the 2nd defendant, the application is merited, and leave is granted to the plaintiff to effect service on the 2nd defendant by way of advertisement once in either The Daily Nation Newspaper or The Standard Newspaper, once on a week day.

The costs of the application shall be in cause.

Delivered and dated this 25th day of July, 2014 at Nakuru.

H.A. OMONDI

JUDGE

N/A for parties