



REPUBLIC OF KENYA



**Karingi v Migwi & 8 others (Environment & Land Case  
208 of 2014) [2022] KEELC 154 (KLR) (10 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 154 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE 208 OF 2014**

**EC CHERONO, J**

**JUNE 10, 2022**

**BETWEEN**

**JAMES MIGWI KARINGI ..... PLAINTIFF**

**AND**

**ROBERT GACHU MIGWI (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF THE LATE MIGWI KARI) ..... 1<sup>ST</sup> DEFENDANT**

**BERTHA WAKERA MIGWI ..... 2<sup>ND</sup> DEFENDANT**

**JOSEPH WANJOHI MIGWI ..... 3<sup>RD</sup> DEFENDANT**

**JULIUS KARIMI MIGWI ..... 4<sup>TH</sup> DEFENDANT**

**PETER MIANO MURIITHI ..... 5<sup>TH</sup> DEFENDANT**

**PETER KARIMI NJUIRI ..... 6<sup>TH</sup> DEFENDANT**

**STANLEY KINYUA MIGWI ..... 7<sup>TH</sup> DEFENDANT**

**GEOFFREY MWAI GITURA ..... 8<sup>TH</sup> DEFENDANT**

**JUSTUS NJIRAINI GITGAIGA ..... 9<sup>TH</sup> DEFENDANT**

**RULING**

1. By a Notice of Motion dated 13<sup>th</sup> May 2021, the Plaintiff/Applicant is seeking leave to serve Justus Njiraini Githaiga, Weston Gachoki Kinuua, Julius Karimi Migwi, Anthony Muriuki Munyiri, Julius R.m Muguongo And Anne Waithera Kandege with the application dated 16/10/2020 and other pleadings by way of substituted service by affixing the same in all the Court Notice Boards within Kirinyaga County.



2. In his supporting affidavit, the applicant deposed that he was pursuing two parcels of land he had purchased being L.R NO. INOI/THAITA/49 and INOI/THAITA/233 and that after filing this suit, the defendant decided to subdivide the suit land and transfer the resultant portions to third parties. He further deposed that when he recently decided to conduct a search, he discovered that land parcel NO. INOI/THAITA/233 was subdivided into land parcels NO. INOI/THAITA/1151 to INOI/THAITA/1161.
3. He stated that land parcel NO. INOI/THAITA/1152 to INOI/THAITA/1156 are registered in the name of one Stanley Kinyua as well as land parcel NO. INOI/THAITA/1159 while land parcel NO. INOI/THAITA/1159 which was originally registered in the name of Bertha Wakera Migwi was subdivided into L.R NO. INOI/THAITA/1231 and INOI/THAITA/1232 and thereafter transferred L.R NO. INOI/THAITA/1232 to one Peter Miano Muriithi while L.R NO. INOI/THAITA/1231 remained in her name.
4. She stated that Land parcel NO. INOI/THAITA/1158 is registered in the name of Peter Karimi Njuri, L.R NO. INOI/THAITA/1159 is registered in the name of Stanley Kinyua Migwi, L.R NO. INOI/THAITA/1160 is registered in the name of Geoffrey Mwai Gitura while L.R. NO. INOI/THAITA/1161 is registered in the name of Justus Njiraini which has now been transferred to Anne Waithera Kandege.
5. The applicant further stated that he does not know the whereabouts of the above mentioned purchasers, their address or their telephone numbers. He said that he even contacted the sub-chief of Thaita location where the suit land is situated who informed him that he did not know them and that those persons did not reside in his jurisdiction.

Order 5 Rule 17 which has been cited by the applicant provides as follows:-

“(1)

Where the court is satisfied that for any reason the summons cannot be served in accordance with any of the preceding rules of this order, the court may on application order the summons to be served by affixing a copy thereof in some conspicuous place in the court house, and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the court thinks fit-----“.

6. It is trite law that Summons to Enter Appearance and all court processes shall be served and/or effected personally unless the defendant has an agent empowered to receive the same on his/her behalf. Where the defendant cannot be found, the court may, on an application by the plaintiff, allow service of the court documents to be effected by substituted service under Order 5 Rule 17 *CPR*.
7. The Plaintiff/applicant at paragraph 10, 11 and 12 of his supporting affidavit admits that he does not know the whereabouts of the respondents and that he even contacted the area sub chief who informed him that he did not know the intended defendants and that they did not reside within his jurisdiction. Substituted service of Summons and other court processes is an alternative mode of service to personal service which is the best mode of service. Substituted service is allowed where personal service has been attempted severally without success. Order 12 of the *Civil procedure Rules* provide as follows:-



"12.

Where in any suit, after a reasonable number of attempts have been made to serve the defendant and defendant cannot be found, service may be made on an agent of the defendant empowered to accept service or on any adult member of the family of the defendant who is residing with him."

8. The Applicant has not annexed any affidavit of service on any attempts made to effect personal service upon the intended defendants. The applicant has not explained how the proposed alternative mode of service of the court processes will reach the intended defendants whose whereabouts are unknown? The Applicant has admitted that he does not know where the intended defendants come from or reside. If the intended defendants do not reside within Thaita Location where the suit property is situated, there is no indication that they live within the Jurisdiction of the Court Stations within Kirinyaga County. Affixing the Summons and the application under review on the Notice Board of all court stations will not serve any useful purpose.
9. For all the foregoing reasons, I find the Notice of Motion dated 13<sup>th</sup> May 2021 lacking merit and the same is hereby dismissed. I make no order as to costs.

**RULING READ DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS 10<sup>TH</sup> JUNE, 2022.**

.....

**HON. E.C. CHERONO**

**ELC JUDGE**

**In the presence of :-**

M/S Muturi H/B for Wanjiru Wambugu for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup> & 8<sup>th</sup> Defendants

M/S Wambui H/B for Ann Thungu for the Plaintiff

M/S Kiragu B/B for Rurige for 1<sup>st</sup> Defendant

M/S Kabuta C/A - present.

