



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**CIVIL APPEAL NO. 537 OF 2004**

**FREDRICK OENGA NYAMWEGA.....APPELLANT/ORIGINAL  
PLAINTIFF**

**VERSUS**

**HILLTOP TAXIS LTD.....1<sup>ST</sup> RESPONDENT  
BARNABAS KIPROP LETING.....2<sup>ND</sup> RESPONDENT/ORIGINAL DEFENDANTS**

*(Being an appeal from the Judgment of C. Meoli Esq Senior Principal Magistrate dated  
9<sup>th</sup> July 2004 in CMCC 6847 of 2000 at Milimani Commercial Courts, Nairobi)*

**RULING**

**Application to Serve through Substituted Service Dated 7<sup>th</sup> July 2011**

**I. INTRODUCTION**

1. The Subordinate Court case involves a running down case. The appellant original plaintiff had sued the first and second respondent in TORT seeking damages due to their negligence whereby he was run down by their motor vehicle that caused him injury.

2. The trial magistrate ruled that no negligence had been proved. The suit was dismissed.

**II APPLICATION 7<sup>TH</sup> JULY 2011**

3. The appellant filed appeal on 22<sup>nd</sup> July 2004. The respondents were not served with any documents except the record of appeal filed on 22<sup>nd</sup> November 2007. The reasons being that their advocate ceased to act for them being M/s Kipkorir Titoo Kiara & Co Advocates. Their last known address is the only contact the advocate had.

4. Efforts to serve them personally was not fruitful. They asked for substituted service to be effected.

### III FINDINGS

5. The applicant has demonstrated efforts made to trace the respondents (Muga SPDR) (5<sup>th</sup> May 2009). Their advocate is no longer on record.

6. I would agree and grant the application for service to be effected by substitutive service. The advocate has requested this be done by registered post to their last known address.

7. This is granted. Order that the substituted service be by registered post. There must be an envelope containing the equivalent number of stamps, retained by the applicant, as the one sent. There is required to be a certificate of posting. An affidavit of service to this effect be made.

8. All documents required be served through the registered post being the record of appeal, the memorandum of appeal and hearing notice for the next direction date.

9. Costs in the appeal.

DATED THIS 4<sup>th</sup> DAY OF OCTOBER 2011 AT NAIROBI

**M.A. ANG'AWA**  
**JUDGE**

*Advocates* :

- i) *J Nyakiangana instructed by Julius Nyakiangana & Co Advocates for the appellant*
- ii) *No appearance for the respondents*