



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. 1924 OF 2007

MOHAMMED SULEIMAN MUNYU

(Suing as administrator of the estate of

AMINA NJERI MOHAMED - DECEASEDPLAINTIFF

V E R S U S

JOHN WACHIRA MUTUA NJAU1ST RESPONDENT

WILFRED NJOROGE GACHUHI2ND RESPONDENT

R U L I N G

On 10th July, 2007 Justice Waweru heard Mr. Kiania Njau for the Plaintiff on the application dated 20th September, 2006 which sought leave to serve court process to the Defendants by way of substituted service in a local daily on the ground that they had not been traced at their last known address. The Judge allowed the application on the same day and directed that the Defendant be served with summons by advertisement in either the **Daily Nation** or **The Standard** newspapers following which the Defendants would have 21 days to enter appearance.

On 2nd April, 2008 the Plaintiff filed an application seeking to extent the validity of the summons to enter appearance for a further 12 months. The Plaintiff had discovered that the order issued on 10th July, 2009 for substituted service had coincided with the expiry of the summons to enter appearance. The application was heard on 7th July, 2008 by Justice Osiemo. The Judge delivered his Ruling on 17th October, 2008 in which he stated as follows:-

“Service of process is so crucial a matter in litigation that court including Deputy Registrars must encourage the best service i.e personal service and more so where the dispute is over land.

For the above reasons I decline to grant the order sought and order that efforts be made to effect personal service.”

The Plaintiff was aggrieved by the order and filed the present application under **section 3A** of the **Civil Procedure Act** and **Order 44** of the **Civil Procedure Rules** seeking that it be reviewed **“by lifting the same as it had overruled a Judge of the same jurisdiction and made on an application not argued**

before him.”

In the supporting affidavit by Nicholas Kiania Njau, advocate for the Plaintiff, it was deponed that:-

“When the ruling was read it was clear that the Honourable Mr. Justice Osiemo did not decide on the application for extension of the validity of the summons which was before him but that seeking leave to serve summons by substituted service which he dismissed.”

In the body of the Ruling the Judge stated as follows:

“Summons were issued but the same could not be served on the defendants as the defendants could not be traced. On 20th September, 2006 the plaintiff brought an application by way of a chamber summons seeking leave to effect service on the defendant by way of substituted service. The application was heard on 10th July, 2007 and the Plaintiff was granted leave to effect service upon the defendant within 21 days from the date of the order but the same was not done within the granted period. On 14th September, 2007 the plaintiff filed the present application seeking orders to extend the validity of the summons to enter appearance by the defendants for a further term of 12 months. The application was based on the ground that the order issued by court on 10th July, 2007 for substituted service concided the expiry of summons to enter appearance.”

The court considered the application and concluded by declining to grant the same. He asked that efforts be made to effect personal service on the Defendants

It is not true that the Judge “wrote a ruling on the application dated 20th September, 2006”. It is clear the Ruling was on the application dated 14th September, 2007. The Plaintiff was aggrieved by the concluding orders. I have anxiously considered the matter. It would appear that what the Judge was dismissing was an application for substituted service. That is a matter Judge Waweru had dealt with and determined. There was, I find, an inadvertent error on the face of the record and/or inadvertent mistake. The application had not been opposed and the Ruling does not show the Judge found any reasons not to allow it. I review the Ruling by setting aside the orders dismissing the application and directing that there be personal service. In their place there will be an order allowing the application. The validity of the summons is extended for 12 months from today. The Defendants shall be served by advertisement by the **Daily Nation** or **The Standard**. The Defendants shall enter appearance within 21 days from the date of the advert.

**DATED AND DELIVERED AT NAIROBI
THIS 25TH DAY OF OCTOBER 2010**

**A. O. MUCHELULE
J U D G E**