



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case ELC 124 of 2007

MILTON MAINA MUSA KIURU.....PLAINTIFF

VERSUS

ELIJAH KIGUNDU KIURU.....1ST DEFENDANT

SAMUEL KARUUMI KIURU.....2ND DEFENDANT

NAHASHON MIANO.....3RD DEFENDANT

THE HON. ATTORNEY GENERAL.....4TH DEFENDANT

THE DISTRICT LANDS REGISTRAR, KIRINYAGA.....5TH DEFENDANT

R U L I N G

By this Chamber Summons brought under Order V Rule 17 of the Civil Procedure Rules the Plaintiff seeks orders to effect service upon 1st and 2nd and 3rd Defendants by way of substituted service. In support of the application Milton Maina Musa Kiura has sworn an affidavit giving grounds for the application in which he avers that on 4th June 2007 he was given a process server by the firm of M. N. Oonge & Company Advocates to go with him so that he can point out the 1st, 2nd and 3rd Defendants; that on 5th June 2007 they proceeded to Kerugoya District where the Defendants resided but on arrival they were informed that the Defendants had relocated to Nairobi that he has made all efforts to trace the Defendants but to no avail. First I would state that the suit land LR No MWERUA/KAGIONI/436 is situate in Kirinyaga District in Central Province. he facts which gave rise to this litigation show that the Defendants had secured registration of the suit land through succession being Succession Cause 199 of 1994 at Kerugoya Resident Magistrate's Court.

This being a dispute over land, the suit ought to have been filed in Nyeri High Court. For the Plaintiff to have instituted the suit in Nairobi went contrary to the provisions of Section 12 of the Civil Procedure Act which provides thus:-

“12. Subject to the pecuniary or other limitations prescribed by any law suits.

- (a) for the recovery of immovable property with or without rent or profits;
- (b) for the partition of immovable property.

- (c)
- (d) **for the determination of any other right or interest in immovable property;**
- (e)
- (f)

where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate.”

The suit property is in Kirinyaga District within the local jurisdiction of Nyeri High Court. It follows therefore that this suit ought to have been filed in Nyeri High Court. That could have contributed to thek of service alleged.

Further this being a dispute over land in rural areas personal service is the best service because very few lowly peasants have access to newspapers.

For the reasons stated above I decline to grant the orders sought and order that suit be transferred to Nyeri High Court for hearing and final determination.

Dated at Nairobi this 18th day of June 2008.

J. L. A. OSIEMO

JUDGE