



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

ELC Case 1924 of 2007

MOHAMED SULEIMA MUNYU

(Suing as administrator of the estate of

AMINA NJERI MOHAMED – DECEASED).....PLAINTIFF

VERSUS

JOHN WACHIRA MUTANJAU.....1ST DEFENDANT

WILFRED NJOROGE GACHUHI.....2ND DEFENDANT

R U L I N G

The plaintiff brought this suit against the defendants by way of a plaint filed on 4th July 2006 seeking judgment against the defendants jointly and severally for

- (a) A declaration that the transfer of the land **LR No RUIRU E./BLOCK 5/74** to each of the defendants were obtained fraudulently and no title passed to them or any one of them from Amina Njeri Mohamed now deceased.
- (b) An order for cancellation of the transfers and titles issued to the defendants.
- (c) An order reverting the title to **LR No RUIRU E./BLOCK 5/74** to the deceased of her administrator.
- (d) Costs of this suit; and
- (e) Any other or further relief or reliefs as this Honourable Court may deem fit to grant.

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 defendants 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 ground that the order issued by court on 10th July 2007 for substituted service coincided with the expiry of summons to enter appearance.

The facts as gathered from the pleadings are that the 1st defendant had fraudulently transferred the suit land to himself on 23rd March 1999 and in turn transferred the same to the 2nd defendant on 25th August 2005 and currently the 2nd defendant is the registered owner of the suit land.

There are several authorities by the Court of Appeal to the effect that personal service must be effected on the defendant to the extent it is practicable. That is the ideal service. One of such cases is the case of **FILIMONA AFWANDI YALWALA v RONALD INDIMULI AND ANOTHER CA No 69 of 1987**, where the court said:

“In my opinion in the present case the first consideration is Order 5R 901 of the Civil Procedure Rules on service. Service of the summons ought to be effected on the defendant personally to the extent it is practicable. That is the ideal form of service. Before it is departed from there must be circumstances which would reasonably support the departure. The words wherever it is practicable suggest that there would be occasions when it would not be practicable to effect personal service. Process servers must however not easily resign from personal service merely because of the alternatives of substituted service.”

Service of process is so crucial a matter in litigation that court including Deputy Registrars must encourage the best service ie 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.

Those are the orders of this court.

Dated and delivered at Nairobi this 17th day of October 2008.

J. L. A. OSIEMO

JUDGE