

REPUBLIC OF KENYA

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

ELC Civil Case 2265 of 2007

PAULINE WANGUI GACHANJA.....PLAINTIFF

VERSUS

KAIRU KIRURI.....DEFENDANT

R U L I N G

The plaintiff filed this suit against the defendant by way of Originating Summons on 23rd October 2007 seeking orders that he be declared to have become entitled to the suit land being **LR No. GITHUNGURI/GATHANGARI/T 420** by adverse possession. In support of the claim the plaintiff swore an affidavit in which he averred that he purchased the suit land from the defendant in 1964 and took possession immediately thereafter.

That in 1981 one of the defendant's sons came and started claiming the suit land which necessitated the placing of a caution against the suit land on 28th May 1981.

On 21st April 2008 the plaintiff brought this Chamber Summons seeking orders that he be granted leave to effect service upon the defendant by way of substituted service through Advertisement in one edition of a Daily Newspaper in circulation within the Republic of Kenya or otherwise as the court may order. In support of this application Geoffrey Maina has sworn an affidavit giving grounds. He avers that he is an advocate of the High Court of Kenya practicing as such in the name and style of Maina Makome and Company Advocates and he has conduct of this matter on behalf of the plaintiff and hence competent to swear this affidavit. That on or about 22nd October 2007 his firm received instructions from the plaintiff herein against the defendant in the suit herein being a claim for adverse possession over that parcel of land known as **LR No. GITHUNGURI/GATHANGARI/T420**. That prior to receiving instructions the plaintiff had carried out an official search with respect to the suit property and confirmed that the registered owner remained one Kaniu Karari.

That the spirited and concerted efforts to trace the defendant's whereabouts have to date borne no fruit and the originating summons dated 23rd October 2007 remains unserved. That it has proved difficult to trace the whereabouts of the defendant for the purpose of effecting service. Whenever it is practicable service must be made on the defendant in person unless he had an agent empowered to accept service in which case service on the agent shall be sufficient or on any adult member of the family. Personal service is the ideal service and more so in land disputes. Before it is departed from there must be circumstances which would reasonably support the departure and the process server must swear an affidavit showing the attempts he made to effect personal service.

From the affidavit evidence on record it is stated the plaintiff purchased the suit land and took possession in 1964. But as late as 1981 the son of the defendant and come and tried to evict him from the suit land which compelled him to lodge a caution. The chances are that with some effort, the defendant or members of his family could be traced. There is no evidence of affidavit sworn by the process server showing the attempts he made to effect personal service. The affidavit sworn by Counsel for the plaintiff does not assist since he is not an authorized process server and does not show the efforts made to effect personal service on the defendant.

For the above stated reasons I decline to grant the orders sought and dismiss the application.

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

J. L . A. OSIEMO

JUDGE