

REPUBLIC OF KENYA

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

Misc Civil Appli 422 of 2006

SALIM OUMA ONDITI.....APPLICANT

Versus

THE MINISTER FOR LOCAL GOVERNMENT & OTHERS.....RESPONDENT

RULING

By Chamber Summons dated 12th June 2007, the Applicant seeks leave of this court to effect service of the Notice of Motion dated 3rd August 2006, by way of substituted service in one of the Local daily newspapers that is, the Daily Nation or the Standard. That the 3rd Respondent do respond to the Applicant's Judicial Review Application and the court do fix the Notice of Motion for hearing.

The Application is supported by grounds found in the body of the Application and an Affidavit sworn by Thomas Nduku, a process server.

It is the Applicants submission that the 3rd Respondent was served with the Notice of Motion but has failed to file any papers and after the court gave directions with regard to the hearing, the Applicant has been unable to serve the 3rd Respondent.

The process server depones that the 3rd Respondent was served by Mr. Benard Okeyo and an Affidavit dated 31st August 2006 was filed in court on 7th September 1986. That thereafter, the process server received several documents from the Applicants ie skeleton arguments filed on 28th March 2007, Notice of Motion of 22nd March 2006, 18th April 2006, 7th May 2006 and 25th May 2007 to serve on the 3rd Respondent but has not been able to effect service nor trace the 3rd Respondent in his offices at the City Council of Nairobi.

That is why this order of substituted service is sought. Counsel for the Respondents Mrs. Chesire and Mr. Omotii had no objection to the Application.

I have looked at the Affidavit of the process server, Benard Okoyo and it seems the 3rd Respondent was served with the Notice of Motion but never responded by filing his papers. The court has made subsequent orders in regard to preparation of filing of the skeleton arguments with a view to setting the matter shown for hearing but none of these have been served in the 3rd Respondent. The process server Nduku states that his efforts to serve the 3rd Respondent have been futile but he has not shown the efforts made to serve the 3rd Respondent. He generally states that he was given several documents to serve but failed to get the 3rd Respondent. That is not sufficient attempt. The process server should have specified the dates he attempted to serve, the place and time. However, since it seems that the 3rd Respondent was served with the Notice of Motion, it was his duty to appear and take part in the proceedings but it seems he is not interested. I find no need to serve the 3rd Respondent by substituted service and will decline to grant that Application. However, I will direct that further direction be taken as to hearing of the Notice of Motion.

Costs to be in the cause.

Dated and delivered this 15th day of October 2007.

R.P.V. WENDOH

JUDGE