



REPUBLIC OF KENYA
IN THE HIGH COURT AT
MALINDI
CIVIL CASE 74 OF 2007

HARRISON K. NDUNDIPLAINTIFF

VERSUS

SAMUEL KIIRU KAMAU.....DEFENDANT

R U L I N G

By an application by way of Chamber Summons pursuant to the provisions of Order V Rule 17(1) and Order XLVIII Rule 5(1) (d) (ii) of the Civil Procedure Rules, the applicant seeks orders:

- i) That the summons to enter appearance herein be served upon the defendant by way of substituted service.
- ii) That costs of this application be provided for.

The application is based on the grounds that:

- 1) All efforts made to trace and serve the defendant have come to nought.
- 2) The defendant has not been seen for the last 16 years.
- 3) Substituted service to issue to enable the speedy conclusion of this suit.

The application is predicated upon the annexed affidavit of Omagwe E. Angima sworn on the 5th day of October 2007.

For the applicant it was argued that upon being instructed to lodge claim of adverse possession by the plaintiff he filed suit and prepared summons to enter appearance.

That subsequently he has endeavoured to serve the defendant with summons to enter appearance in vain. The physical and location of the defendant are unknown, hence this application.

I have carefully analysed and considered the application and the affidavit in support in addition to counsel's oral submission. In my view the application is merited.

Accordingly, there shall be orders in terms of prayer 1. The advertisement to be on Daily Nation or Standard Newspaper on a working day. Costs shall be in the cause.

DATED and delivered at Malindi this **26th** day of **November 2007**

N. R. O. Ombija

JUDGE