



REPUBLIC OF KENYA



KENYA LAW
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**Noor v Mutai & 3 others (Land Case E002 of 2023)
[2025] KEELC 4141 (KLR) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4141 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
LAND CASE E002 OF 2023
GMA ONGONDO, J
MAY 26, 2025**

BETWEEN

ABDUL AZIZ NOOR PLAINTIFF

AND

WILLIAM MUTAI 1ST DEFENDANT

THE LAND REGISTRAR NANDI 2ND DEFENDANT

THE DIRECTOR LAND ADMINISTRATION 3RD DEFENDANT

THE COUNTY GOVERNMENT OF NANDI 4TH DEFENDANT

RULING

1. In the Notice of Motion application dated 17th February 2025 originated under, inter alia, Order 5 Rule 17 of the Civil Procedure Rules 2010 and sections 1A & 3A of the *Civil Procedure Act* Chapter 21 Laws of Kenya, the plaintiff/applicant, Abdul Aziz Noor through M/S Cheruiyot Melly and Company Advocates is seeking the orders infra;
 - a. That the Honourable court be pleased to grant the plaintiffs leave to serve the 1st defendant/ Respondent through substituted service by advertising the Summons in one of the local circulating dailies.
 - b. That the costs of this application be in the cause.
2. The application is based upon the supporting affidavit of even date and eight grounds which include;
 - a. That the plaintiff/applicant instituted this suit vide the plaint dated 13th of July 2023 on 17th Day of July 2023.



- b. That the plaintiff/applicant has been unable to effect service of the Summons and the pleadings aforesaid upon the 1st Defendant/Respondent who is unknown to him and his last place of residence also unknown to him.
- c. That the whereabouts of the 1st defendant is unknown to the plaintiff and efforts to trace him have proved futile.
3. The application is coming up for hearing today and Mr Victor Kiprono has implored the court to allow the same in terms of orders 1 and 2 sought therein.
4. In that regard, is the application meritorious?
5. It is established law that a party to a case must be made aware of it's existence to enable that party to either respond to it or not; see *Ogada-vs-Mollin (2009) eKLR*.
6. Furthermore, it is trite law that for any reason where summons cannot be served in the ordinary way, personal service, a party can be served by way of substituted service; see *Ephraim Njugu Njeru-vs-Justin Bedan Muturi and 2 others (2006) eKLR*.
7. The grounds of the application and the supporting affidavit reveal that the plaintiff cannot trace the 1st defendant for service in the ordinary way.
8. In the circumstances, I find the application cogent, firm and merited.
9. A fortiori, the application dated 17th February 2025, be and is hereby allowed in terms of orders 1 and 2 sought therein as stated in paragraph 1 (a) and (b) hereinabove.
10. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 26TH DAY OF MAY 2025.

G M A ONGONDO

JUDGE

Present;

Mr V. Kiprono learned counsel for the plaintiff/applicant

Walter, court assistant

