



REPUBLIC OF KENYA



Independent Lutheran Church v Evangelical Lutheran Church in Kenya (Enviromental and Land Originating Summons E002 of 2024) [2024] KEELC 6614 (KLR) (8 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6614 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2024**

E ASATI, J

OCTOBER 8, 2024

BETWEEN

INDEPENDENT LUTHERAN CHURCH PLAINTIFF

AND

EVANGELICAL LUTHERAN CHURCH IN KENYA DEFENDANT

RULING

1. Vide the Notice of Motion application dated 16th September 2024, Independent Lutheran Church, the applicant, seeks for an order that leave be granted to the plaintiff's Counsel, Messrs Emily and Associates Advocates to effect service of the Summons to Enter Appearance and plaint herein upon the Respondent by means of substituted service, being the publication of an advertisement in any of the local Daily papers. The application also seeks for an order that time be fixed for the Respondent to enter appearance and that costs of the application be provided for.
2. The grounds upon which the application is brought as shown on the application and Supporting Affidavit are that despite all reasonable and diligent efforts by the applicant's Advocate on record to effect service of the Summons and pleadings upon Mr. Desai, the said Advocate have not been able to do so. That the physical location of the Respondent is unknown.
3. I have considered the grounds of the application and the averment in the Supporting Affidavit. Substituted service is a last resort after all efforts to serve in person have failed.
4. The application was expressed to be brought pursuant to the provisions of order 5 Rule 17(4) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. Order 5 Rule 17 of the Civil Procedure Rules provides that

“Where the court is satisfied that for any reason the summons cannot be served in accordance with any of the proceeding rules of this order the court may on application order the summons to be served.....in such other manner as the court thinks fit.”



And Rule 17(4) provides for substituted service by way of advertisement.

5. The Respondent who is sought to be served is the Evangelical Lutheran Church in Kenya. From the pleadings, the parties herein have had interactions for a long period of time. They have had past litigation and other interactions. The court is not satisfied that the applicant is unable to trace the Respondent for purposes of service of court process.
6. Although it was the applicant's case that efforts to serve a Mr Desai have been futile, from the pleadings, Mr, Desai is not a party in the case and further, evidence of the said efforts made by Process Servers to serve were not availed.
7. The court is not satisfied that this is a proper case for service by substituted service by way of advertisement in the daily papers. The application is declined. No order as to costs.

Orders accordingly.

RULING DATED AND SIGNED AT VIHIGA, DELIVERED VIRTUALLY THIS 8TH DAY OF OCTOBER 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE

In the presence of:

Ajevi- Court Assistant

for the applicant

No appearance for the Respondent

