



Construction Group Company Limited v Ogada (Suing as the legal representative of the Estate of Debora Owande Ogada (Deceased) & 2 others (Environment and Land Appeal 29 of 2021) [2023] KEELC 15965 (KLR) (1 March 2023) (Ruling)

Neutral citation: [2023] KEELC 15965 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL 29 OF 2021
GMA ONGONDO, J
MARCH 1, 2023
(FORMERLY MIGORI ELC APPEAL NO 30 OF 2020)

BETWEEN

CONSTRUCTION GROUP COMPANY LIMITED APPELLANT

AND

ANYANGO OGADA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF DEBORA OWANDE OGADA (DECEASED)) 1ST RESPONDENT

SAM ONYANGO OGADA 2ND RESPONDENT

AGNES ATIENO OTIENO 3RD RESPONDENT

RULING

1. The appellant's counsel, Ms Kiiru has applied to be allowed to serve the respondents by way of substituted service on the grounds that;
 - a. Learned counsel, Mr Kimanga who is record for the respondents is deceased.
 - b. There is no notice of change of advocate or intention to act in person by the respondents filed herein.
 - c. The respondents cannot be traced.
2. The respondents' counsel is reportedly deceased and the respondents cannot be traced.
3. This court is conscious of order 5 rule 17 of the [Civil Procedure Rules, 2010](#) on substituted service; see also *Baiywa v Bach* (1987) KLR 89 on the essence of service upon a party.



4. In the spirit of articles 48, 50 (1) , 25 (c) of the Constitution of Kenya, 2010 as well as section 3 of the Environment and Land Court Act, 2015 (2011) and sections 1A, 1B, 3 and 3A of the Civil Procedure Act chapter 21 Laws of Kenya, I find the application meritorious.
5. Accordingly, the application is allowed.
6. The appellant's counsel shall serve the respondents by substituted service within the next thirty days from this date.
7. The appeal is set for April 17, 2023 to confirm compliance and for directions.
8. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 1ST MARCH 2023

G. M. A ONG'ONDO

JUDGE

PRESENT

- a. Ms. Kiiru, learned counsel for the appellant.
- b. A. Okello, Court assistant.

