

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC [OS] CASE NO. E007 OF 2021

SILAS KITHIIRA..... PLAINTIFF

VERSUS

TIMOTHY MUGAMBI.....DEFENDANT

RULING

1. This is a ruling in respect to the application dated **25th October, 2021** by the Plaintiff/Applicant and supported by the affidavit of Silas Kithiira that sought the following orders:

1. That leave be granted to the Plaintiff's advocates on record, M/s. Murango Mwenda and Company Advocates, to effect service of the pleadings herein upon the Defendant by means of substituted service, being the publication of an advertisement in the Daily Nation Newspaper.

2. That the costs of and occasioned by this application be in the cause.

2. The Plaintiff/Applicant has stated that the Defendant is unknown to the Plaintiff and the Plaintiff does not know where to find him for personal service of the pleadings. That it is in the interest of justice that the application be allowed and the prayers sought be granted to enable the matter proceed.

3. The applicant states that the claim is founded on adverse possession of land and the Defendant who is not known to the Plaintiff has never stepped on the suit land at any time and his whereabouts are unknown.

4. I have considered the application and the submissions made by counsel for the Plaintiff/Applicant. Order 5 rule 17 of the Civil Procedure Rules provides for the law on substituted service. The law allows court to grant leave to a party to serve by substituted service if it is satisfied that for any reason the summons cannot be served personally in accordance with the provisions of Order 5. Order 5 rule17(4) provides for substituted service by advertisement as prayed herein by the applicant. Substituted service by way of advertisement in a newspaper shall be deemed as proper service where the same has been allowed by the court.

5. In this case, the Applicant has stated on oath that the whereabouts of the Defendant is not known to him. The claim herein is one of adverse possession. In the originating summons, the Applicant has averred that he has been in exclusive and continuous possession and occupation of the suit land for over 12 years, and that though the land is registered in the Defendant's name, the Defendant has never stepped on the land at any time at all.

6. I find that the application dated **25th October, 2021** is merited and I allow the same and grant the following orders:

a) Leave is granted to the Plaintiff/Applicant to effect service of the pleadings herein upon the Defendant by means of substituted service by advertisement in the Daily Nation Newspaper within 21 days from today's date.

b) Mention on **6.12.2021** to confirm compliance and further directions.

c) Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 10TH DAY OF NOVEMBER, 2021 IN THE PRESENCE OF:

C/A: Ndegwa

Mr. Kaimenyi h/b for Mwenda for Plaintiff/Applicant

C. K. YANO,

JUDGE.