



**Njeru v Njeru & 23 others (Environment and Land Case
9 of 2023) [2025] KEELC 5862 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5862 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE 9 OF 2023**

**AK BOR, J
JUNE 18, 2025**

BETWEEN

NGONDI NJERU PLAINTIFF

AND

**AMBROSE KITHAKA NJERU & 23 OTHERS & 23 OTHERS & 23 OTHERS &
23 OTHERS & 23 OTHERS & 23 OTHERS DEFENDANT**

RULING

1. The Plaintiff filed the application dated 8/8/2024 seeking to effect service upon the 4th, 6th, 7th, 8th, 9th, 10th, 11th, 13th, 15th, 16th, 18th, 20th and 21st Defendants through substituted service in a daily newspaper.
2. The application was made on grounds that the Plaintiff served all the Defendants through the advocates representing them in Embu ELC 336/2015 but the advocates insisted that the Defendants should be served personally. Further, that the Defendants were served with the assistance of the 1st and 10th Defendants but the court held that proper service was not effected. The Plaintiff claimed that the Defendants are not known to him.
3. Macharia Muraguri, advocate for the Plaintiff swore the affidavit in support of the application and attached a copy of the certificate of electronic service evidencing service upon the advocates and a copy of the return of service that was rejected by the court.
4. The application was opposed by the 1st Defendant, Ambrose Kithaka Njeru vide the replying affidavit in which he deposed that the Plaintiff had not demonstrated any effort made to serve the remaining Defendants. He averred that the Plaintiff and the Defendants all come from the same locality and that some of the Defendants like the 16th and 18th Defendants are dead. He denied effecting any service on any Defendant on behalf of the Plaintiff's advocate or that he was a process server. He contended that being dead, the 16th and 18th Defendants could not be served through substituted means and urged the court to dismiss the application. He exhibited a copy of the death certificate for the 18th Defendant.



5. The 23rd, 24th and 25th Defendants filed grounds of opposition to the application. They urged that the Plaintiff had not adduced evidence of service of summons on the parties as required by Order 5 of the Civil Procedure Rules. They contended that if at all there was service of summons on the parties, the original summons were invalid having expired pursuant to Order 5 Rule 2[1]. That on expiry of the summons, the applicant did not apply to extend their validity under Order 5 Rule 2[2]. They urged that the application was frivolous and vexatious since the Plaintiff had intimated at paragraph 2 of the plaint that he knew where the Defendants resided. They added that the Defendants in question and the Plaintiff belonged to the same clan as intimated by the Plaintiff in the plaint and therefore the Defendants were well known to him.
6. Further, they contended that the affidavit of service annexed to the Plaintiff's application clearly indicates that the other Defendants Ambrose Kithaka Simon and Simon Namu Daudi were well known to the other Defendants as he used them to serve the pleadings to the subject Defendants and therefore they were within his reach. They averred that the Plaintiff had not satisfied this court that he had exhausted all other means of service and urged that the application be dismissed with costs.
7. The court directed the parties to file and exchange written submissions. As at the time of this ruling, only the 23rd, 24th and 25th Defendants had filed their submissions which the court has considered. They submitted that the grounds for granting substituted service are provided for under Order 5 rule 17[1] of the Civil Procedure Rules. They cited several cases and stated that the party seeking substituted service must prove to the satisfaction of the court that service through the ordinary means was impossible. That the Plaintiff ought to show consistent effort made towards ordinary service which have failed following the Defendant's conduct. They submitted that it is a rule of natural justice that no one should be condemned unheard and that each party affected by a suit ought to be accorded a reasonable opportunity to be part of the trial.
8. They contended that substituted service ought to be the last resort and that the Defendants who are sought to be served through substituted means are persons well known to the Plaintiff. They submitted that the other Defendants are well known to the Defendants intended to be served by substituted means as shown in the return of service that was rejected by the court. This, they averred clearly showed that the Plaintiff had not exhausted the other means of service and that the Defendants were not out of reach as the Plaintiff claimed. They submitted that the Plaintiff had neither made serious attempts at effecting service on the Defendants nor had he tendered evidence to show the attempts made. They urged the court to dismiss the application.
9. Under Order 5 Rule 7 of the Civil Procedure Rules states that where there are more than one Defendant, service of summons shall be made on each Defendant.
10. Substituted service is only permitted under Order 5 Rule 17 [1] where the court is satisfied that personal service cannot reasonably be effected in accordance with the Rules.
11. The Plaintiff has not demonstrated that he has made efforts to effect personal service on the remaining Defendants. The Plaintiff's allegations of prior service through advocates in a different suit as well as through other Defendants does not in the court's view amount to diligent effort to effect personal service. If the 16th and 18th Defendants are dead, then substituted service upon them is not possible.
12. The Plaintiff has not met the threshold for the grant of leave to effect substituted service on the Defendants who are yet to be served.
13. The application dated 8/8/2024 is dismissed with costs to the 1st, 23rd, 24th and 25th Defendants.

DELIVERED VIRTUALLY AT EMBU THIS 18TH DAY OF JUNE 2025.



K. BOR

JUDGE

In the presence of: -

Mr. Macharia Muraguri for the Plaintiff

Mr. I. Kiplimo holding brief for Mr. J. Kiongo for the 23rd and 25th Defendants

Diana Kemboi- Court Assistant

