



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 63 OF 2012**

**CAROL CONSTRUCTION ENGINEERS LTD....PLAINTIFF**

**VERSUS**

**NAOMI CHEPKORIR LANGAT.....DEFENDANT**

**RULING**

*(Application seeking leave to serve an application out of jurisdiction by way of courier service; application allowed).*

1. The application before me is that dated 2 October 2018 filed by the defendant. It is an application brought pursuant to the provisions inter alia of Order 5 Rule 22(3), 25, and 27 of the Civil Procedure Rules, 2010. It seeks leave to serve the application dated 15 September 2018, upon the intended 2<sup>nd</sup> defendant, out of jurisdiction. If allowed, the applicant wants to serve the intended 2<sup>nd</sup> defendant at her last known address in the United Kingdom.
2. The application is opposed by the plaintiff through grounds of opposition.
3. To put matters into context, the applicant is wife to the former registered proprietor of the land parcel Njoro/Ngata Block 2/130, which her husband, Joel Kimitet Langat, had charged to Kenya Commercial Bank (KCB). The property was put up for sale by chargee and purchased by one Martha Moraa Mayieka. Martha, in the year 2009, transferred the land to the applicant in the Originating Summons, a limited liability company (who to avoid confusion, I will refer to as the plaintiff). This suit was commenced on 13 November 2012, and what prompted the plaintiff to file suit was that the applicant, invaded the suit land and sought to take possession. Several applications followed, principally on the issue of possession, and the current status of the property is that it is the plaintiff in possession.
4. Through an application dated 15 September 2017, the applicant sought orders to enjoin KCB, and Martha Moraa Mayieka and Joel Kimitet Langat, to this suit. When the application came before me, I directed that all these persons sought to be enjoined be served with the application so that I can hear from them before allowing or disallowing the application.
5. It is pursuant to those orders that the applicant has now filed this application so as to be allowed to serve the application dated 15 September 2017, upon Martha Moraa Mayieka, out of jurisdiction. In her supporting affidavit, she has deposed inter alia that Martha's last known address is in the UK, and she has provided a physical address. This address was obtained from an affidavit sworn by Martha Moraa, in the suit Nakuru CMCC No. 1857 of 2000, where she, had sworn an affidavit giving this UK address as the address of her residence. She also deposed that she is a lecturer at a University in the UK. The applicant herein thus wants to be allowed to serve by way of courier to the address that Martha Moraa provided when she swore the said affidavit.
6. In the Grounds of Opposition and Preliminary Objection, the plaintiff has stated that the defendant has not disclosed any effort to trace the said Martha Moraa; that there is no evidence to show that this is the correct current address of Martha Moraa; that the applicant has not satisfied the requirements of Order 5 Rule 25 for service outside jurisdiction; that there is no facility at law to allow the joinder of Martha Moraa to this suit; that issues touching on Martha Moraa are res judicata.
7. I have taken note of all the above.
8. What the applicant believes is that Martha Moraa lives in the UK, and she has been fortified in this belief by the address that Martha Moraa gave in the year 2012, when she swore an affidavit. I cannot fault the applicant for believing that Martha Moraa is in the UK and I have not been given any contrary evidence to demonstrate otherwise. I think prima facie, the applicant has demonstrated that Martha Moraa does reside in the UK, at the address that she provided when she swore the affidavit pointed out by the applicant.
9. I am aware of the provisions of Order 5 which provide for service of process out of Kenya. Strictly speaking, Order 5 provides for service of summons or notice of summons for a suit, and not for applications. But it certainly can be utilised or utilised with modifications, for

service of an application. I think, it will be left to the discretion of the Court to see what best suits the circumstances at hand. For the purposes of this application I have not seen the need to follow the very elaborate procedure laid down for service of summons out of jurisdiction and I think service by courier will suffice. I do not see any prejudice that any party will suffer if I am to allow the applicant to effect service by this method. To me, the applicant has demonstrated prima facie that Martha Moraa Mayieka resides in the UK and has provided a UK address which I have no reason to doubt.

10. I therefore allow this application and do give leave to the applicant to serve the Motion dated 15 September 2017, through an established courier service within 14 days from today. There be also served a hearing notice for the date that I will give in court at the delivery of this ruling for the inter partes hearing of the application dated 15 September 2017.

11. I make no orders as to costs.

12. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 5<sup>th</sup> day of February 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Mr. Ngeno holding brief for Mr. Aim for the applicant.

Mr. Kagucia for the plaintiff.

Court Assistant :Nelima.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**