



Ndubi alias Wefukho Ndubi (Now Deceased) (Substituted by Nyongesa Wafukho Ndubi) v Mwaniki (Environmental and Land Originating Summons 90 of 2010) [2025] KEELC 5707 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5707 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 90 OF 2010**

EC CHERONO, J

JULY 31, 2025

BETWEEN

**JAMIN WAFUKHO NDUBI ALIAS WEFUKHO NDUBI (NOW DECEASED) PLAINTIFF
SUBSTITUTED BY NYONGESA WAFUKHO NDUBI**

AND

ALFRED NEPHAT MWANIKI DEFENDANT

RULING

1. Vide a Notice of motion brought under order 5 Rule 17 (i), 2 and 3 of the *Civil Procedure Rules* and Section 3 'A' & 1 'A' of the *Civil Procedure Act* dated 28th May 2025, the Plaintiff/Applicant seeks the following orders;
 - a. That this application be heard on priority.
 - b. That the Applicant be granted leave of this honourable Court to effect service upon the Respondent Alfred Nephath Mwaniki by Registered Post in the last known address of P.O Box 91, Bungoma or any other mode of service this court may deem fit.
 - c. That the costs of this application be provided for.
2. The application is based on grounds that the Applicant wish to seek leave of this Honourable Court to serve the Respondent by substitutional service vide registered Post through his last known address P.O Box 91 Bungoma. That the matter has not been able to proceed for lack of service and that the only means of service upon the Respondent is by registered post.
3. In his supporting affidavit, the Applicant reiterated the contents of his grounds on the face of the application and stated that after the demise of his father, he was allowed to be substituted as the plaintiff



in this case and that after the filing of the originating summons herein the Respondent would not be traced and his late father had to make an application to serve the Respondent by substituted service through the Daily Nation Newspapers. He further deposed that after service as through the Daily Nation Newspapers, the Respondent did not enter Appearance nor file defence. He stated that his late father applied for interlocutory judgment which was allowed and is still in force to date. He further stated that the matter was fixed for hearing and they served the Respondent through the Daily Nation Newspapers but the case would not proceed

Analysis and Decision

4. I have considered the application, the supporting affidavit and the court record generally as well as the applicable law. Order 5 Rule 17 provides various modes of service Summons and court processes the law may allow to be effected as a substitute to personal service. One of them is service by substituted service through the last known postal address of the opponent which the Applicant is seeking in the present application. According to the Applicant, they have not been able to trace the whereabouts of the Respondent despite numerous attempts and now seeks leave to effect service through his last known postal address P.O Box 91 Bungoma. From copies of documents annexed to the supporting affidavit is a green card indicating that Alfred Nephath Mwaniki, the Respondent herein of P.O Box 91 Bungoma was registered as proprietor of the suit property on 25.2.1980 and a Land Certificate issued the same date.
5. Order 5 Rule 17 (1) of the [Civil Procedure Rules](#) provide as follows;

“ Where the court is satisfied that for any reason the summons cannot be served in accordance with any of the preceding rules of this order, the court may on application order the summons to be served by affixing a copy thereof in some conspicuous place in the court-house, and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the court thinks fit.....”
6. At paragraph 4 and 6 of the supporting affidavit, the Applicant deposed that upon filing this suit and after issuance of Summons to enter appearance, he was unable to trace the Respondent and he made an application to serve through the daily Newspapers which was allowed. He further deposed that the Respondent did not enter appearance and he made a request for interlocutory judgment which was also granted. I am satisfied that the Respondent cannot be served personally in accordance with the rules of procedure of this Order.
7. In view of the foregoing, I find the Notice of Motion dated 20th May 2025 merited and the same is allowed as prayed.
8. Consequently, the Applicant be and is hereby granted leave to effect service of court processes upon the Respondent through his last known postal address Number 91, Bungoma. The costs of this application shall be costs in the cause.

READ, DELIVERED AND SIGNED AT BUNGOMA THIS 31ST DAY OF JULY, 2025

HON. E.C CHERONO

ELC JUDGE.

In the presence of;

Mr. Oira H/B for Mr. Onkangi for the Applicant.



Applicant-present.

Bett C/A.

