



**Atieno v Change (Environment and Land Case E002 of 2025)  
[2025] KEELC 7965 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7965 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT AND LAND CASE E002 OF 2025  
FO NYAGAKA, J  
NOVEMBER 14, 2025**

**BETWEEN**

**DANIEL OLUOCH ATIENO ..... APPLICANT**

**AND**

**JOHN NYACHEO CHANGE ..... RESPONDENT**

**RULING**

**(On whether to serve Summons to Enter Appearance by substituted service)**

1. Before me is a Notice of Motion dated 22nd October 2025, brought under Order 5 Rule 17 of the Civil Procedures, 2010. The applicant prays for Orders that.
  1. The applicant be granted leave to serve the originating summons and all pleadings upon their responded by way of substituted service.
  2. That the mode of substituted service be by advertisement in a newspaper paper of national circulation.
  3. Then the costs of this application be the cause.
2. The application was based on the grounds that despite efforts by the Respondent it became completely difficult to trace and serve the him. This was proved by the Affidavit of Service sworn on 3<sup>rd</sup> September 2025 filed by the process server. The applicant had been unable to trace the Respondent. The applicant has a pending Originating Summons seeking orders of adverse possession. It is in the interest of justice that he be permitted to serve by substituted service.
3. The application was supported by the Affidavit sworn by the Applicant himself on 22nd October 2025. He deposed that he filed the Originating Summons herein seeking orders of adverse possession in respect of the whole of that parcel of land known as Kanyada/K/Katuma B/46 situated in Homa Bay County. The Respondent herein is the registered owner of the suit land but his whereabouts



are unknown. Despite reasonable efforts, including inquiries from the area chief, neighbors and area residents, the applicant had been unable to trace the Respondent for purposes of effecting service upon him.

4. Further, the applicant added that he had annexed an Affidavit of Service sworn by one Bruno Ogada Imbo on 23rd September 2025 which shows that despite due and diligent efforts, personal service upon the Respondent could not be affected. The applicant thus implored the court to permit him to serve the Respondent through substituted service by way of advertisement in a newspaper or nationwide circulation, preferably the Standard. He added that the Respondent was likely to receive the notice through this method, and no prejudice would be occasioned by this mode of service.
5. The applicant then annexed an Affidavit sworn by Bruno Ogada Imbo on 23rd September 2025. In it he deposed that on the 17th September 2025 he received the duplicate copies of Summons to Enter Appearance and Originating Summons and Supporting Affidavit together with the annexures from the applicant herein. He was to serve them upon John Michael Chang. On 18th of September 2025, about 13:00 hours, he proceeded to the office of the Chief Arujo location, one Mr. Robert Lango, which is located at Sango area in Homabay, with the intent of asking him whether he knew Mr. John Nyacheo Change, the Respondent. He introduced himself and the purpose of his visit. The area Chief informed the process server that he did not know Mr. Change or his whereabouts and so he could not help him to trace him.
6. Further on the 18th September 2025 at 1330 hours he proceeded to the office of the Assistant Chief, Arujo sublocation, which is situated at Rabuor Masawa in Homabay town, with the intent of asking him if he knew the defendant. He introduced himself to the Assistant Chief and the purpose of his visit. The Assistant Chief informed him that he did not know who Mr. Change was and so he would not help locate him.
7. After that, he commented and conducted extensive searches for the Respondent on various social media platforms. But they too bore no fruit. He found no profile or account of the said Mr. John Nyacheo Change in LinkedIn, X, and Facebook. When he checked on LinkedIn, there were two accounts in the name of Junichiro which were ineffective, but both had no postings or anything, any activity whatsoever. As for the X account he found an active account with the name John Nyacheo. On Facebook, he found 12 accounts that appear under the said name of John Nyacheo. Upon reviewing the accounts, he found that none of them corresponded with the Respondent's likely age, economic fire profile or background given that the Respondent had already bought the property in the 1980s. He therefore returned service of the process, duly done.
8. The above is the background of the instant application.

## **ANALYSIS AND DETERMINATION**

9. I have considered the application, the law and the submissions by the applicant. I am of the view that the only question outstanding herein is whether the application is merited or not.
10. Service of summons to enter appearance on a Defendant who is natural person, sued in his private capacity as such, is provided for in Order 5 of the Civil Procedure Rules. A Plaintiff, Petitioner or Claimant should take a number of steps in doing so. First the attempt of the service has to be personal as provided under Order 5 Rule 7, or on an agent duly authorized to accept service as provided for under Rule 8 where the said defendant has an authorized agent or advocate. If the process server fails to trace the defendant or his agent after a number of attempts, he can serve an adult member of the family as provided for under Rule 12. The person served has to accept service by affixing his signature or mark of acceptance on the copy of summons which is returned to the judge as a confirmation of



the act but where the defendant refuses to append his signature or mark on the summons the process server may do an affidavit of service stating as much.

11. In the event that the attempts referred to above fail, the Plaintiff may apply to the court for service through substituted service, as provided for under Order 5 Rule 17 of the Civil Procedure Rules. This may be, upon an order of the court being granted on the condition of “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”. The other manner may be by advertisement as provided for under Rule 17(4).
12. In the instant case, the Court formed the opinion that the Applicant had made genuine several attempts to serve the process. Thus, he complied with Order 5 Rules 7, 8, 12, 13, 14, 15 and 17 of the Civil Procedure Rules. Consequently, the Application dated 22<sup>nd</sup> October 2025 is allowed as prayed but on the following conditions: -
  - a. First, the Applicant shall advertise the summons to enter appearance and the pleading herein within the next twenty-one (21) days in either the Daily Nation or the Standard Newspaper of at least an eighth (1/8<sup>th</sup>) of a page in size, and this should NOT be in the business section of the paper.
  - b. Second, the Plaintiff is required also to make copies of the summons to enter appearance and affix copies thereof in the A3 size of the paper on the outside of the Defendant’s gate and conspicuous placed of the four (4) corners of the parcel of land in issue and other copies on the court Notice Board, within the next seven (7) days.
  - c. This matter shall be mentioned on 15<sup>th</sup> December, 2025 to confirm compliance of these orders.
13. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM  
THIS 14<sup>TH</sup> DAY OF NOVEMBER 2025.**

**HON. DR. (IUR) FRED NYAGAKA**

**JUDGE**

In the presence of

Court Assistant: Ms. Lola

The Plaintiff in person (online)

