

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT BUNGOMA
LAND CASE NO E006 OF 2024(O.S)

CALISTUS APPLICANT	NYONGESA	WANYAMA.....	1 ST
CHARLES APPLICANT	SIFUNA	WANYAMA.....	2 ND
PROTUS APPLICANT	SIFUNA	KHAEMBA.....	3 RD
=VERSUS=			
ALFRED RESPONDENT	WANYONYI	SIMIYU AND 26 OTHERS.....	

RULING

1. Before this court for determination is the Notice of Motion dated 09/06/2025 wherein the Applicants seek to serve the amended originating summons upon the 4th to 27th Respondents by substituted service through a newspaper advertisement. The application is supported by grounds on the face of the application and the affidavit of the 1st Applicant sworn on an even date.

2. It is the Applicants argument that their case involves a claim for adverse possession of land parcel no. E.Bukusu/S.Kandui/1922 measuring approximately 3.60ha. That they have been unable to effect service physically thus, the current application.

3. The 2nd Respondent filed a replying affidavit sworn on 18/07/2025 wherein he stated that the application has been brought under the wrong provisions of the law and that the mode of service proposed ought to be a last resort. They argued that the applicants have not told this court of the difficulties they have encountered in effecting personal service. It is his contention that the affidavit of service attached comprises of half truths and contradicting information. Lastly, it was stated that the respondents might not be able to access the proposed mode of service as they reside in remote regions and therefore, allowing the application would prejudice them.

4. To determine whether the application is meritorious, the starting point is the legal basis for the grant of an order for substituted service. In **Ephraim Njugu Njeru vs. Justin Bedan Njoka Muturi & 2 others [2006] eKLR** held as follows:-***“Substituted service is normally ordered where the court is satisfied that there is reason to believe that the person to be served is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. Service in the ordinary way is generally personal service.”***

5. Upon examination of the supporting affidavit of service, this Court finds the Applicants’ contention that ordinary service is impracticable to be wholly unpersuasive. In paragraph 3 of the

annexure marked **CNW-01**, the process server expressly stated that the 4th Respondent convened the other respondents at his residence, whereupon he duly effected personal service upon all of them. Further, in annexure **CNW-02**, the process server affirms that he proceeded to the 11th Respondent's place of work, where he also encountered the 26th Respondent, and that both willingly received summons on behalf of the 8th to 12th and 16th to 27th Respondents. He goes on to depose that he was even able to obtain the cell phone contacts of several of the respondents, demonstrating ease of accessibility and traceability. The same pattern is reiterated in annexure **CNW-03**.

6. In light of these depositions, this Court finds it untenable for the Applicants to assert that personal service is unachievable. The record clearly shows that the respondents are not only readily reachable but have previously been personally or directly traced without any hindrance. Accordingly, this Court rejects the narrative advanced by the Applicants and holds that the threshold for substituted service has not been met, as no sufficient, credible, or compelling basis has been laid to demonstrate that personal service is either impossible or unduly burdensome in the prevailing circumstances.

7. Given the nature of the claim whose effect is to dispossess the Respondents of their proprietary interests this Court urges the Applicants to ensure personal service is effected. Such service is readily achievable through reasonable diligence,

including utilising the assistance of the area chief or the administrators of the respective estates, as was indeed suggested in one of the affidavits on record.

8. In the result, and for the reasons stated hereinabove, I find that the Applicants have failed to satisfy the legal threshold for the grant of leave to serve summons by way of substituted service. The application is devoid of merit and the same is hereby dismissed. Costs of the application shall be costs in the cause.

DATED, SIGNED and DELIVERD at **BUNGOMA** this 27th day of November, 2025.

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HON.E.C CHERONO
ELC JUDGE

In the presence of;

1. Mr. Juma Waswa for the Respondent.
2. Mr. Kibet H/B for Were for the Applicant.
3. Bett C/A.