

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELCL CASE NO. E093 OF 2025**

STEPHEN KINYANJUI NGANGA.....PLAINTIFF

-VERSUS-

THE ADMINISTRATORS OF THE ESTATE OF

KAKAI SHURA TATEK (KASHAAMBI KAKAI, SISITA,

DAVID TOYIANKA KAKAI & DENILSON MALIT

KAKAI.....DEFENDANTS

**RULING**

***(In regard to the service of summons to enter appearance)***

1. Summons to enter appearance in this case were apparently served upon the law firm of Naikuni, Ngaah & Miencha Advocates on behalf of the Defendants as per the affidavit of service deposed by one Migui Mungai. The deponent who is an advocate of this court does not explain in the affidavit why he opted to

serve the summons upon the law firm on behalf of the Defendants rather than on the Defendants personally.

2. On the 11<sup>th</sup> December 2025, when this matter was listed for directions, Mr. Mungai, advocate for the Plaintiff informed the court that the summons were effected upon the law firm of Naikuni, Ngaah & Miencha Advocates because they represent the Defendants in a succession case being Succession Cause No. E070 of 2021. Despite service however, the Law Firm of Naikuni Ngaah & Miencha Advocates is yet to enter appearance and or file a statement of defence on behalf of the Defendants. Mr. Ochieng, an advocate from the said law firm informed the court that they are yet to get documents/instructions from the Defendants to enable them file a statement of defence on their behalf.
3. The Plaintiff's advocate has subsequently requested for entry of judgment in default of appearance against the Defendants. His request for judgment is dated 10<sup>th</sup> November 2025.
4. The Court notes that the Plaintiff's claim herein is not a liquidated claim. A request for judgment as the one filed by the Plaintiff only applies to liquidated claims. For unliquidated claims the

provisions of **Order 10 rule 9** of the Civil Procedure Rules applies. The rule provides that,

***“Subject to rule 4, in all suits not otherwise specifically provided for by this order, where any party served does not appear the plaintiff may set down the suit for hearing”.***

5. Before setting down the suit for hearing however, the court must be satisfied that proper service has been effected upon all the Defendants.
6. From a reading of the provisions of Order 5 of the Civil Procedure Rules, service of summons to enter appearance ideally should be personal unless the Defendant(s) has an agent empowered to accept service on his behalf. Under the provisions of **Order 5 rule 8(2)**, summons may be served upon an advocate who has instructions to accept service on behalf of a defendant. It must be demonstrated that the advocate being served has explicit instructions to accept service on behalf of the Defendant(s).
7. The issue then for the court to consider is whether the service upon the law firm of Naikuni, Ngaah & Miencha Advocates in this case was proper.

8. As already stated earlier on, the deponent of the affidavit of service does not explain why he opted to serve the summons upon the law firm. He does not expressly state that the law firm had instructions to receive summons on behalf of the Defendants and if they did, how he came to know they had such instructions.
9. Mr. Ochieng Advocate was not forthright that his law firm had instructions to accept summons on behalf of the Defendants. The mere reason that the law firm represents the Defendants in a succession cause does not mean that it is authorized to receive summons on their behalf in this case.
10. Parties have a right to be represented by advocates of their own choice. Neither the law firm nor this court should impose an advocate on the Defendants.
11. Consequently, the court directs personal service of the summons to enter appearance issued in this case upon the Defendants.
- It is so ordered.

**Dated Signed and Delivered at Kajiado Virtually this 20<sup>th</sup>  
Day of January 2026.**

**M.D. MWANGI**  
**JUDGE**

**In the virtual presence of:**

**M.D. MWANGI**  
**JUDGE**

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