

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. E258 OF 2022**

EZEKIEL O. ANGWENYI.....  
....PLAINTIFF

VERSUS

ADEN IBRAHIM ABDI.....1<sup>ST</sup>  
DEFENDANT

HASSAN ABDI GULED.....2<sup>ND</sup>  
DEFENDANT

UKAY CENTRE FOREX BUREAU LTD.....3<sup>RD</sup>  
DEFENDANT

**RULING**

**Background**

1. This Ruling relates to the Notice to Show Cause why this suit should not be dismissed for want of prosecution and the Notice of Motion dated 5/2/2026 seeking leave to serve the 1<sup>st</sup> and 2<sup>nd</sup> defendants through substituted service.
2. The background of this case is that, following non-action on this suit for a period of over one (1) year, this court issued, on 27/5/2025, a Notice to Show Cause why the Notice of Motion application dated 15/5/2024 and the main suit should not be dismissed for want of prosecution. The matter

came up for hearing of that Notice on 21/10/2025. The parties were absent despite service. Consequently, this Court dismissed the Notice of Motion application dated 15/5/2024 and directed that the Plaintiff be served with the Notice to Show Cause why the main suit should not be dismissed for the same reason.

3. On 20/01/2026, Mr. Nyaberi attended court on behalf of the Plaintiff and Mr. Oonge attended for the 3<sup>rd</sup> Defendant. Mr. Nyaberi informed the court that attempts to serve the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have proved futile and that he would be seeking leave to serve them through substituted service. He also sought leave to file an affidavit explaining why the suit should not be dismissed. This Court allowed counsel to file the application for substituted service and an affidavit as to why this suit should not be dismissed for want of prosecution.

### **Notice of Motion**

4. The Application seeking leave to serve the 1<sup>st</sup> and the 2<sup>nd</sup> Defendant through substituted service is the Notice of

Motion dated 5/2/2026. It seeks one substantive prayer, leave to serve the 1<sup>st</sup> and 2<sup>nd</sup> defendants through substituted service through advertisement in one newspaper with wide circulation. The reasons for seeking this prayer can be summed up to the effect that all efforts to personally serve the two defendants with the Plaint and Summons to enter appearance have proved futile.

### **Response to the Notice to Show Cause**

5. Further, the Affidavit responding to the Notice to Show Cause why this suit should not be dismissed for want of prosecution is dated 6/2/2026. It is sworn by the Plaintiff who has deposed that upon filing of this suit, the Plaintiff attempted to serve the firm of Ahmed Nasir Abdullahi & Co. Advocates who declined service on the grounds that they did not have instructions; that attempts to serve the 1<sup>st</sup> and 2<sup>nd</sup> defendants through WhatsApp using their last known phone numbers proved futile and that he will suffer loss if he is not heard on merit.

### **Determination**

6. I have considered the reasons advanced by the Plaintiff for the delay in prosecuting this suit. While he claims that he was not able to serve court process on the 1<sup>st</sup> and 2<sup>nd</sup> defendants, that reason does not explain why he did not approach the court earlier to seek the leave he is now seeking. This can only mean that he has been indolent in pursuing the prosecution of this case.
7. Given that the 3<sup>rd</sup> Defendant did not contest the explanations offered, I will exercise my discretion in the matter and find that the Plaintiff is at liberty to prosecute his suit, which should be done within 90 days from the date of this ruling, failing which, the suit shall be dismissed, unless sufficient reasons be given.
8. On the issue of leave to serve the 1<sup>st</sup> and the 2<sup>nd</sup> defendants through a newspaper with wide circulation, I have considered the grounds supporting the instant application and do hereby allow the same. The Plaintiff shall serve the 1<sup>st</sup> and the 2<sup>nd</sup> Defendant through an advertisement in a newspaper with wide national circulation. This shall be done within 15 days from today's ruling.

9. At the same time the Plaintiff and the Defendants shall prepare to comply with order 11 of the Civil Procedure Rules to pave the way for the hearing of this case. In that regard, this matter shall be mentioned before Hon. Chembeni, the Deputy Registrar on 24/3/2026 for purposes of confirming the compliance with the above orders and to commence the pre-trial proceedings.

10. It is so ordered.

**Dated, signed and delivered this 25<sup>th</sup> day of February 2026.**

**S. N. MUTUKU  
JUDGE**

**In the presence of:**

1. N/A for the Plaintiff
2. N/A for the Defendant