



REPUBLIC OF KENYA



KENYA LAW
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**Gikonyo v Mburu & another (Environmental and Land Originating Summons
E024 of 2025) [2026] KEELC 1514 (KLR) (16 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1514 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E024 OF 2025
MN GICHERU, J
MARCH 16, 2026**

BETWEEN

GERALD NJUGUNA GIKONYO APPLICANT

AND

BEATRICE WAITHIRA MBURU 1ST RESPONDENT

ESTHER WANJIKU NDERITU 2ND RESPONDENT

RULING

1. This ruling is on the notice of motion dated 2-2-2026. The motion which is by the Applicant is brought under Orders 5 rule 17 and 51 rule 1 Civil Procedure Rules, Section 3 of the Civil Procedure Act and all enabling provisions of the law. It seeks three (3) orders.
 1. That leave be granted to the Applicant to effect service of the originating summons upon the Respondents by way of substituted service by advertisement in one of the daily newspapers with a nation wide circulation.
 2. That a time be fixed for the Respondents to enter appearance.
 3. That costs of this application be provided for.
2. The motion is based on three (3) grounds and is supported by the affidavit of the Applicant's counsel dated 2-2-2026. The gist of the grounds and the affidavit is as follows. One, a process server was instructed to effect service upon the Respondents. The last known location of the Respondents was Nairobi and Kenol town. Secondly, despite every effort made by the process server, he has been unable to serve the Respondents with the pleadings in this case. Finally, the only option left is to serve the pleadings by way of advertisement in a newspaper with nationwide circulation.
3. I have carefully considered the motion in its entirety including the grounds and the affidavit and I find that the following issues arise.



- i. Whether the Applicant has done enough in attempting to serve the Respondents.
 - ii. Whether the Court should allow service through advertisement in a newspaper.
 - iii. What is the way forward.
4. On the first issue, I find that the grounds and the affidavit do not state exactly what the process server did in an effort to trace the Respondents. His name is not given. The exact place where the Respondents lived in Kenol and Nairobi is not stated. The process server should have indicated the work that they did, the churches they attended, who their neighbours were to prove the efforts he made in serving them. He has not stated that he asked their chief or village elder of their whereabouts. Had he done so, this would have proved that he made some effort. He has not done enough.
5. Regarding the second issue, I find that service through advertisement in a newspaper should not be allowed. This is because service should always be physical and personal. It is the rule that service be personal as per Order 5 rule 8(1) Civil Procedure Rules which provides as follows.

“Wherever it is practicable, service shall be made on the Defendant in person, unless he has an agent empowered to accept service, in which case service on the agent shall be sufficient.”

Service through any other mode should be the exception to the rule. Since the Applicant seeks to be declared the owner of the land that he does not say that he bought but merely occupied, he should conduct the best possible service.

Order 5 rule 17(1) Civil Procedure Rules provides as follows.

“Where the Court is satisfied that for any reason the summons cannot be served in accordance with any of the proceedings rules of this order...”

The Court is not satisfied that every effort has been made to serve the Respondents personally and physically as required by Order 5 rule 8(1) of the Civil Procedure Rules.

6. Finally and in order that the best service upon the Respondents is attained, the Applicant to do the following-
- a. Obtain the registration particulars of the two Respondents from the Land Registrar Murang’a or the Director, National Registration Bureau. The registration particulars should include the village, sub location, location, sub county or division and county or District and Identity card numbers and,
 - b. Using the above particulars, the Applicant to serve the Respondents personally and physically with the originating summons and the accompanying documents in the presence of the Chief or assistant Chief of the area where they reside. Such service to be photographed.

The Land Registrar Murang’a and the in charge National Registration Bureau to accord the Applicant access to the Respondents particulars and records necessary to enable him effect service upon the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG’A THIS 16TH DAY OF MARCH, 2026.

M.N. GICHERU
JUDGE.



Delivered online in the presence of; -

Court Assistant – Muturi

Applicant’s Counsel –Mr Ng’ang’a holding brief

