



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELC NO 15 OF 2017

MUGO CHEGE1ST PLAINTIFF/APPLICANT
MWANGI CHEGE.....2ND PLAINTIFF/APPLICANT
VERSUS
WANJIRU MUNDAKADEFENDANT/RESPONDENT

RULING

(1) This ruling is on the notice of motion dated 10-2-2026. The motion which is brought under **Order 5 rule 17 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act** seeks the following orders.

- 1) That this Court be pleased to grant leave for service of the notice of motion dated 20-2-2025 and all subsequent processes in this suit upon the Defendant to be effected by way of substituted service.**
- 2) That the substituted service be effected by way of advertisement in a newspaper of wide circulation within Kenya, preferably the Daily Nation or the Standard.**
- 3) That the costs of this application be provided for.**

(2) The motion is based on five(5) grounds and is supported by an affidavit sworn by the Applicants dated 18-2-2026. The gist of the grounds and the affidavit is as follows. One, the Applicants have been trying to serve the Respondent in vain and the process server too has been unable to trace the Defendant for service. Two, the area chief has confirmed that the Respondent no longer resides within his area of jurisdiction. Three, it is clear that the Respondent is either evading service or her whereabouts cannot be ascertained by ordinary means. Four, one James Ndegwa Muthiga was duly appointed to effect service upon the Respondent on three separate occasions without success. Finally, the most effective means of substituted service is by way of advertisement in a newspaper of wide circulation like the Daily Nation or the Standard.

(3) I have carefully considered the motion in its entirety including the grounds and the supporting affidavit. I find the Applicants have not done enough to serve the Respondent personally as required by the law.

Order 5 rule 8(1) of the **Civil Procedure Rules** 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.”

Firstly, there is an affidavit of service dated 18-5-2016 on record where Mwangi Kamau Advocate deposes as follows.

“That on 22-8-2015 and in the Company of the 1st Plaintiff herein, we effected service upon the Defendant at Kibendera in Kandara Sub-County who received our papers but refused to sign our returns.”

There is nothing in the affidavit by James Ndegwa Muthiga dated 9-3-2026 to show that he went to Kibendera to look for the Respondent. The said Ndegwa does not say who told him that the Respondent lived at Kaharati Shopping Centre.

(4) There is a way of locating the Respondent which leaves no doubt as to personal service upon her. The Land Registrar Murang’a has the identity card number of the Respondent and probably even a copy of identity card itself. If that is not the case, the National Registration Bureau has all the particulars of the Respondent. Using those particulars, the Respondent can be served through the Chief or Assistant Chief of her home location. I direct as follows.

(a) The Plaintiffs to obtain the registration particulars of the Defendant from the Land Registrar Murang’a or the Director/Officer in charge National Registration Bureau.

(b) Using those particulars, the process server to trace the Defendant through the Chief/Assistant Chief of her home area.

(c) The Land Registrar Murang’a and the Director National Registration Bureau to allow the Plaintiffs access the registration records of the Defendant to enable them effect service upon her.

It is so ordered.

Dated, signed and Delivered virtually at Murang’a this 23rd day of March, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of: -

Court Assistant – Muturi

Applicant’s Counsel – Absent