



Kasera v Ndege (Sued as the legal representative of the Estate of Leonard Ndege - Deceased)v & another; Onyango (Interested Party) (Land Originating Summons E062 of 2025) [2026] KEELC 1930 (KLR) (19 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1930 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
LAND ORIGINATING SUMMONS E062 OF 2025
FO NYAGAKA, J
MARCH 19, 2026**

BETWEEN

NORAH AKINYI KASERA COUNTER CLAIMER

AND

REYNOLD NDEGE (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF LEORNARD NDEGE - DECEASED) DEFENDANT

AND

JOSIAH ONYANGO INTENDED INTERESTED PARTY

AND

JOSIAH ONYANGO INTERESTED PARTY

RULING

1. The Plaintiff/Applicant filed this suit in the Chief Magistrates Court vide a Complaint dated 07th February 2024 and verified through his Affidavit sworn on the same date. He Relieved off an order directed at the Defendant to vacate the suit land known as Kanyada/Kotieno Katuma A/1180, also an order of eviction against the defendant in default of which the Officer Commanding Station, Homabay Police Station to ensure a peaceful nonviolent eviction process, and the costs of the suit.
2. The Defendant filed a defense later amended it to include a Counterclaim. Upon inclusion of the Counterclaim and the introduction of another party, the Interested Party, the defendant tried to serve her papers on the said Interested Party whom she claims has not been traced to date hence the filing instant application. Thus, she brought the instant application for substituted service, under the following provisions, namely, Article 159 of *the Constitution* of Kenya, 2010, and Order 5 Rule 17 of the Civil



Procedure Rules, and Sections 1A, 1B and 3A of the Civil Procedure Act and all enabling laws (sic). The Application was dated 13th February 2026. She sort the following Orders: -

1. That leave be granted to the applicant herein to serve the respondent herein through substituted service by advertising the summons in one of the local newspapers of nationwide circulation.
2. THAT, the costs of this Application be provided for.
3. The application was based on a number of grounds and supported the affidavit annexed thereto, which was sworn by on 13th February 2026. She listed the following ground for her application. That she instituted a claim adverse possession against the respondent she therefore to be allowed to obtain what she rightfully occupies by transferring to her name the portion she occupies. At the beginning of these proceedings, the Respondent was resident within Homabay County but upon the death of his mother he disappeared and his current whereabouts could not be traced. The applicant tried to locate him through the Area Chief, only to learn that he equally relocated from his home and therefore the applicant was at an impasse (sic) specifically towards service of the court documents upon the respondent who was a necessary party hence the instant application. Despite exercising all due diligence and efforts, the applicant had been unable to trace the respondent herein and effect personal service. The inability to effect services upon the respondent had greatly affected the progress of this suit. It was in the interest of justice that the application be allowed and the prayers sought be granted to enable the matter proceed. No prejudice would be suffered if the service of the directions was by way of substituted service. It was necessary for leave to be granted by this honorable court allowing for substituted service. Th application was brought in good faith.
4. The Defendant, Norah Akinyi Kasera, supported the application by her Affidavit she swore on 13th Day of February 2026. she repeated the contents of the grounds but added other deposition thereto. This Court need not rehash the contents. Suffice it to say that the applicant annexed and marked NAK-1 is a copy of the counterclaim. Further that from the beginning of the suit she knew the respondent herein was staying within Homabay County and that was how he was served with lower court documents before the suit was transferred to this court. He had since relocated to an unknown place. Despite all efforts to serve him it was not possible hence the instant application.
5. This Court has considered the Application. The issue before me is whether the Applicant has demonstrated that she is entitled to the grant of orders that she be permitted to serve the Application through substituted service.
6. Service of court process on a defendant who is natural person in his private capacity is provided for in Order 5 of the Civil Procedure Rules. The Defendant/ Counterclaimant has a number of steps to follow. First the attempt of the service has to be personal as provided under Rule 7 or on an agent duly authorized to accept service as provided for under Rule 8 if he has an authorized agent or advocate. If the process server fails to trace the defendant or his agent after a number of attempts he can serve an adult member of the family as provided for under Rule 12. The person served has to accept service by affixing his signature or mark of acceptance on the copy of summons which is returned to the judge as a confirmation of the act but where the defendant refuses to append his signature or mark on the summons the process server may do an affidavit of service stating as much.
7. In the event that the attempts referred to above fail, the Applicant may apply to the court for service through substituted service, as provided for under Rule 17. This may be “by affixing a copy thereof in some conspicuous place in the court-house, and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked



for gain, or in such other manner as the court thinks fit”. The other manner may be by advertisement as provided for under Rule 17(4).

8. In the instant application the Applicant has demonstrated that she made attempts to serve the summons to enter appearance as summarized above. In these circumstances the application is merited. The upshot is that the Application dated 13th February 2026 is allowed as prayed but on the following conditions: -

1. First, the Applicant shall advertise the summons to enter appearance and the pleading herein in either the Daily Nation or the Standard Newspaper, of a size to be specified by the Deputy Registrar, within the next twenty-one (30) days.
2. Second, the Plaintiff is required also to make copies of the summons to enter appearance and affix copies thereof in the A4 size of the paper on the outside of his gate and conspicuous placed of the four (4) corners of the plot, within the next seven (7) days for 14 days.
3. This matter shall be mentioned on 20th May, 2026 to confirm compliance of these orders.

9. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT MIGORI VIRTUALLY VIA TEAMS PLATFORM THIS 19TH DAY OF MARCH, 2026.

HON. DR. IUR F. NYAGAKA

JUDGE

In the presence of:

Ms. Kimberly Advocate for the Defendant/Applicant.

Ms. Elly for Ondego for the Applicant.

No appearance for other(s).

