



REPUBLIC OF KENYA



KENYA LAW
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**Mrabu & 333 others v Sheikh & 11 others (Environment and Land Case Civil
Suit E041 of 2025) [2026] KEELC 2419 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2419 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE CIVIL SUIT E041 OF 2025**

**JO OLOLA, J
APRIL 30, 2026**

BETWEEN

**MWADZOMBO MWAMORO MRABU 1ST PLAINTIFF
JOSEPH GIFT MAKUMI 2ND PLAINTIFF
RIZIKI BAYA KALUME 3RD PLAINTIFF
SHIDA CHARO KARISA 4TH PLAINTIFF
PHILIP MOGEKA MANWA 5TH PLAINTIFF
KARISA MAYO MUDZOMBA 6TH PLAINTIFF
THOMAS NG'ANG'A 7TH PLAINTIFF
FLORENCE NYAMAI 8TH PLAINTIFF
DANIEL KAVIKU KING'OLA 9TH PLAINTIFF
ANDREW OCHIENG MBAJA & 324 OTHERS & 324
OTHERS 10TH PLAINTIFF**

AND

**TAIBALI MOHAMEDALI SHEIKH 1ST DEFENDANT
ESMAIL MOHAMEDALI SHEIKH 2ND DEFENDANT
KHARUNISSA ESMail MOHAMEDALI SHEIKH 3RD DEFENDANT
TALIB ESMail SHIKH 4TH DEFENDANT
ASHWIN RATILAL MANEKCHAND DOSHI 5TH DEFENDANT
MAHENDRA RATILAL MANEKCHAND DOSHI 6TH DEFENDANT
NALIESH RATILAL MANEKCHAND DOSHI 7TH DEFENDANT**



TARUN DESAI	8TH DEFENDANT
TALIB ESMAIL SHEIKH	9TH DEFENDANT
NATHWANI PROPERTIES LIMITED	10TH DEFENDANT
HASSANALI MOHAMEDALI NOORBHAI	11TH DEFENDANT
THE COMBINED WAREHOUSES LIMITED	12TH DEFENDANT

RULING

1. By the Notice of Motion dated 1st December 2025, the 334 Plaintiffs pray for an order that they be granted leave to serve summons to enter appearance issued by this Court on 1st September 2025 and the Originating Summons dated 29th August 2025 by substituted service through an advertisement in one Kenyan newspaper with a national circulation.
2. The application which is supported by an Affidavit sworn by the Plaintiffs' Advocate McMillan E. Jengo and another one by Morris Mwasaghua is premised on the grounds that:
 - i. The Court process server has been unable to trace the Defendants herein;
 - ii. All efforts and attempts at effecting personal service have been futile;
 - iii. That for the sake of progressing this matter further and avoiding delay since justice delayed is justice denied, it's imperative that the application herein be heard urgently and the orders sought be granted forthwith; and
 - iv. That it is in the interest of justice to allow this application.
3. Order 5 Rule 17 of the Civil Procedure Rules pursuant to which the application is made provides as follows:
 - “ 1. Where the court is satisfied that for any reason the summons cannot be served in accordance with any of the preceding rules of this Order, the court may on application order the summons to be served 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.
 2. Substituted service under an order of the court shall be as effectual as if it had been made on the defendant personally.
 3. Where the court makes an order for substituted service it shall fix such time for the appearance of the defendant as the case may require.
 4. Unless otherwise directed, where substituted service of a summons is ordered under this rule to be by advertisement, the advertisement shall be in Form No. 5 of Appendix A with such variations as the circumstances require.”



4. Arising from the foregoing, it is pertinent that the Rules require that the Court be satisfied that for any reason the summons cannot be served upon the Defendants. An order for substituted service would therefore be made only where a detailed statement has been filed explaining the non-service.
5. In the matter before me, the Plaintiffs have relied on the Affidavit of Non-Service sworn on 28th November 2025 by one Morris Mwasaghua, a Court Process Server, who depones as follows at Paragraphs 2 to 5 thereof:
 - “2. That I am aware that on 2nd September 2025, I received instructions from the firm of Jengo Associates to effect service of summons issued by the Court on 1st September 2025, Originating Summons dated 29th August 2025, together with the Supporting Affidavit and the annexures upon the Defendants herein;
 3. That despite all my diligent and reasonable efforts to effect service personally upon the defendants, I have been unable to locate them.
 4. That I am aware that the plaintiffs advocate together with the plaintiffs do not know the whereabouts of the defendants nor the defendants contacts.
 5. That I have therefore been unable to effect service.”
6. From my perusal of the Affidavit I was unable to discern any efforts that had been deployed by the Process Server to trace the Defendants. The 10th and 12th Defendants are indeed limited liability companies whose mode of service is provided for in law. There was nothing placed before the Court to demonstrate that the Plaintiffs had made any efforts to trace and serve the said companies as by law provided.
7. In the premises, it was clear to me that the Plaintiffs were being more than casual and had not made any reasonable efforts to trace and serve the Defendants.
8. Accordingly, I find no merit in the Motion dated 1st December 2025. The same is hereby struck out with no order as to costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 30TH DAY OF APRIL, 2026.

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J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Kioko holding brief for Jengo Advocate for the Plaintiffs

No Appearance for the Defendants

