



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 157 OF 2016 (O.S)

OLIVER GACHUHU.....PLAINTIFF

VERSUS

PETER WAMWAKI GICHIMU.....1ST DEFENDANT

PETER GACHUHU NJOROGE.....2ND DEFENDANT

RULING

1. The plaintiff's application dated 15/4/2019 brought under Section 1A, 1B and 3A of the Civil Procedure Act and Order 5, Rule 17 of the Civil Procedure Rules 2010 seeking leave to serve summons and plaint upon the 2nd defendant/respondent by way of substituted service was granted on 30/4/2019 and the 2nd defendant was ordered to file defence within 14 days of such advertisement.

2. The suit came up for further directions on 25/7/2019 when Ms. Arunga counsel for the 1st defendant orally opposed the advertisement through local newspaper on the basis that the service should have been of the nature employed in respect of a person within a foreign jurisdiction.

3. I have noted that on the 9/4/2019 when the court directed the plaintiff to file an application for substituted service the 1st defendant was represented and no objection was raised. No objection was also raised on 30/4/2019 when the court granted that application. Indeed Ms. Arunga for the 1st defendant is on record has having stated as follows:

“The 2nd defendant is available.”

4. With respect I do not seem to understand the basis of Ms. Arunga's oral objection. No evidence has been placed before court that the 2nd defendant is within a foreign jurisdiction. I therefore dismiss the objection and order that this suit be set for down for hearing.

Dated, signed and delivered at Kitale on this 30th day of September, 2019.

MWANGI NJOROGE

JUDGE

30/9/2019

Coram:

Before: Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Arunga for the Defendant

Plaintiff in person present

COURT

Ruling read in open court.

MWANGI NJORGE

JUDGE

30/9/2019