



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
ELC325 OF 2016

1. RAMADHAN SAIDI
2. HAMADI IDDI
3. PAULINE OGENGA
4. BENEDICT MWAKIO
5. THOMSA MAKU BARU
6. SYSLVESTER JOSHUA.....PLANTIIFFS

VERSUS

SUDI HAFIDHI
RUKIA BINTI SOUD.....DEFENDANTS

RULING

1. By a Notice of Motion dated 26th May, 2017, brought under the provisions of Sections 1A, 1B, 3, 3A and 63 (e) of the Civil Procedure Act, Order 5 Rule 17 of the Civil Procedure Rules, and Articles 22 and 50 of the Constitution, the plaintiffs seek leave to serve the defendants herein by way of registered mail through their last known address of post office box number 87214, Mombasa.

2. The application is based on the grounds that all efforts have been made to serve the defendants personally but have been unsuccessful and that it is only fair and just in the circumstances that the application be allowed. The application is supported by the affidavit of Nyange Sharia counsel for the plaintiffs sworn on 26th May 2017.

3. In the said affidavit, Mr. Nyange Sharia deposes that he was instructed by the plaintiffs to file that suit together with an application for an injunction. He deposes that he instructed one Timothy Kitsao a Process Server to effect service upon the defendants and the Process Server managed to serve the 1st defendant only. He further deposes that the Process Server made numerous attempts in tracing the 2nd defendant but all efforts have been unsuccessful. A copy of the process server's affidavit of service is attached to the supporting affidavit. In his affidavit, the Process Server has deposed that in the company of the 1st plaintiff; he went to the 2nd defendant's last known place of residence at Changamwe within Mombasa County and made enquiries from the tenants who informed him that they were not aware of the

place the 2nd defendant stays currently. He depones that he has been tracing the physical location of the 2nd defendant with the help of the plaintiffs but he has been unsuccessful. The applicants have also attached a copy of a letter dated 14th May 1992 from the Estate of Sood Bin Ali Bashir, P. O. Box 87214 which refers to **plot No.1997** and signed by the 2nd defendant and another **plot No.1997** is one of the suit properties herein.

4. I have considered the application herein and the affidavit in support. order 5 Rule 17 (1) of the Civil Procedure Rules provides that:

“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 a gain, or in such other manner as the court thinks fit.”

5. The plaintiffs have demonstrated and shown the efforts made to effect service upon the 2nd defendant. A copy of a letter from the 2nd defendant containing their last known postal address has been attached and is in reference to part of the suit property and dated 14th May 1992. From the material placed before me, I am satisfied that personal service has been unsuccessful for good reasons. I note however that the letter attached was written in 1992, a period of over 25 years ago. I am not convinced that service by way of postal address upon the defendants herein using a postal address that was last used over 25 years ago will constitute proper service. In my view the only reasonable and proper mode of service in the circumstances would be by advertisement in one of the daily newspapers with a nationwide circulation.

6. As a result of the foregoing, the application is allowed but amended to the effect that service shall be by advertisement in one of the newspapers with nationwide circulation.

7. Costs of this application shall be in the cause.

Dated, delivered and signed at Mombasa this 10th day of July, 2017.

C. YANO

JUDGE