



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NYERI**

**ELC NO. 121 OF 2015**

**SAMSON MUTHAMI NDUNGU ..... PLAINTIFF**

**-VERSUS-**

**SHADRACK NDIRITU GICHUHI ..... 1ST DEFENDANT**

**THE NANYUKI LAND REGISTRAR ..... 2ND DEFENDANT**

**RULING**

1. I have read the application, the grounds on its face, the supporting affidavit and the replying affidavit. I have also considered the affidavits of service sworn on 25th May, 2015 and 7th July, 2015 respectively.
2. The application by the applicant is dated 28th June, 2016 and filed on even date. The applicant prays for orders that the court inter alia, expunges from the court record the aforesaid affidavits of service for being falsely sworn and also seeks a declaration that the defendant was never served with the summons to enter appearance and the motion.
3. The application is supported by the affidavit of Shadrack Nderitu Gichuhi. He depones that he was never served with any court documents including summons to enter appearance and the amended notice of motion.
4. In paragraph 4 of the affidavit of service sworn on **25th May, 2015**, Simon Ndirangu Ndumia, the process server has deponed that **“..... alighted at Matanya shopping centre and the applicant pointed to me from a close distance the residential home 1st respondent Shadrack Ndiritu Gichuhi and upon entering the gate I found the respondent's employee ..... and I served him with a copy of ..... but she refused to do so but promised to deliver the same to his employer.”**
5. Regarding the affidavit sworn on **7th July, 2015**, the same process server Simon Ndirangu Ndumia depones **“..... I took another vehicle to Matanya shopping centre ..... and found the respondent Murage Karugu Murage present upon being pointed to me, I served him with a copy of amended notice of motion together with its amended supporting affidavit at 10.20 a.m. ....”**
6. It is clear from the affidavit sworn on 25th May, 2016 that the 1st defendant was not personally served with the court documents. The name of the person who allegedly received the summons to enter appearance is not given. Regarding the affidavits sworn on 7th July, 2016 Murage Karugu Murage who allegedly received the documents referred to as the 1st respondent is not the 1st respondent in this matter.
7. Having considered the aforesaid affidavits, I am satisfied that if any service was effected, it was not

properly done.

8.I hereby grant prayer I in the notice of motion dated 28th June, 2016 and direct that the defendant's counsel be properly served with the summons to enter appearance, the plaint, verifying affidavit and amended plaint dated 11th May, 2015 and the amended notice of motion dated 2nd June, 2015 within seven (7) days from the date hereof.

9. Costs of the application will be in the cause.

**Dated, signed and delivered at Nyeri this 18th day of October, 2016.**

**L. N. WAITHAKA**

**JUDGE**

In the presence of:

Mr. Kebuka Wachira for the applicant/1st defendant

Samson Muthami Ndung'u – plaintiff/respondent

N/A for 2nd defendant

Court assistant - Lydia