



**Maina v Langat & 2 others (Civil Application E009 of 2023)  
[2024] KECA 395 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KECA 395 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E009 OF 2023  
JM MATIVO, JA  
APRIL 18, 2024**

**BETWEEN**

**TERESIA MUTHONI MAINA ..... APPLICANT**

**AND**

**DANIEL LANGAT ..... 1<sup>ST</sup> RESPONDENT**

**FRANCIS MAINA MWANGI ..... 2<sup>ND</sup> RESPONDENT**

**GEOFFREY LANGAT ..... 3<sup>RD</sup> RESPONDENT**

*(Being an application to serve the Respondents by way of substituted service through one of the daily newspapers of wide circulation)*

**RULING**

1. Vide an application dated 2<sup>nd</sup> February 2023, brought under Section 3 of the [Appellate Jurisdiction Act](#), Rules 47 & 102 of the [Court of Appeal](#), Rules 2022, the applicant pray for leave to serve the Case Management Notice to the Respondents by way of substituted service through one of the daily newspapers of wide circulation or in such other manner as the Court deems fit.
2. The motion is supported by grounds on its body and a supporting affidavits sworn on 2<sup>nd</sup> February 2023 by Macharia Karanja Advocate for the Applicant. The application is not opposed. Pursuant to the case management directions by the Deputy Registrar of the Court issued on 15<sup>th</sup> March 2024 and the directions on hearing issued on 26<sup>th</sup> March 2024, the application was dispensed with via written submissions. The applicant's submissions are dated 6<sup>th</sup> March 2024. They were filed on 8<sup>th</sup> March 2024.
3. The grounds in support of the application are: (a) the applicant filed Civil Appeal No. 153 of 2016 against the decision of Emukule J in HCCC No. 154 of 2010; (b) parties have been invited severally for case management by the Deputy Registrar Court of Appeal; (c) attempts to serve the respondent have proved futile because the process serve cannot trace the Respondents and/or their Advocate; (d)



the Respondents are necessary parties in the Appeal and no prejudice will be suffered if they are served with the case management directions by way of substituted service.

4. The applicant reiterated the grounds in support of the application and contended that all the efforts by her process server to effect service upon the Respondents have failed. Therefore, pursuant to Order 5 Rule 17 of the Civil Procedure Rule, leave ought to be granted so that the Respondents can be served by way of advertisement in a newspaper. Counsel cited *William Ngare vs. Public Trustee & 10 others* [2015] eKLR, where this Court held that substituted service is resorted to after all reasonable and proper efforts have been made to trace the respondent but in vain.
5. Rule 17 of the Court of Appeal Rules, 2022 provides as follows regarding service and transmission of documents:
  1. Where a document is required to be served on any person under these Rules, service may be effected in such way as the Court may direct and, in the absence of any such direction, shall be made personally on the person to be served or any person entitled under rule 22 to appear on his or her behalf or by any other recognized mode of service as provided under Order 5 of the Civil Procedure Rules (sub. leg).
6. Order 5 Rule 17 of the Civil Procedure Rules 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 courthouse, 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.
7. This Court in Ephraim Njugu Njeru vs. Justin Bedan Njoka Muturi & 2 others [2006] eKLR held as follows: -

“Substituted service is normally ordered where the court is satisfied that there is reason to believe that the person to be served is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. Service in the ordinary way is generally personal service.”
8. The law allows the court to grant leave to a party to serve by substituted service if it is satisfied that for any reason the summons cannot be served personally in accordance with the provisions of Order 5 Rule 17 of the Civil Procedure Rule. I have had an opportunity to go through the entire application, together with the annexures thereto. It is noteworthy that even though it has been deponed that attempts have been made to effect service personally upon the Respondents, there is no evidence to back that assertion. The applicant has failed to annex an affidavit of service sworn by the unnamed process server explaining the efforts that have been made to trace the Respondents.
9. For the foregoing reasons, I am not satisfied that the applicant has made efforts to serve the respondents with the case management notice. Accordingly, the Notice of Motion dated 2<sup>nd</sup> February 2023 is hereby dismissed with no orders as to costs.

**DATED AND DELIVERED AT NAKURU ON THIS 18<sup>TH</sup> DAY OF APRIL, 2024.**

**J. MATIVO**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

