



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OUKO, (P), (IN CHAMBERS))

CIVIL APPLICATION NO. E320 OF 2020

BETWEEN

KAMUTHI FARMERS CO-OPERATIVE SOCIETY LTD.....APPLICANT

AND

NAIROBI CITY COUNTY & 19 OTHERS..... RESPONDENTS

(An application seeking leave to effect service of the application dated 19th October, 2020 and the Court's directions issued on 26th October, 2020 through substituted service)

RULING

Komingoi, J., in a judgment dated 4th June, 2020 dismissed the applicant's suit with costs to the 1st respondent. She however allowed the 1st respondent's counter-claim and entered judgment in the terms prayed. The dispute involves a property known as LR No. 71/7, situated in Kahawa in the City of Nairobi.

Intent on challenging that decision in this Court, the applicant took out a motion dated 19th October, 2020 under **Rule 5(2) (b)** of this Court's Rules seeking an order to stay the impugned judgment and the resultant decree. Thereafter, on 26th October, 2010, this Court issued directions with regard to the disposal of the said motion which included its service on all parties.

According to the applicant's advocates, they made all possible efforts to trace the 2nd to the 20th respondents and/or their advocates without any success. As a result, the applicant filed another motion dated 6th November, 2020 under **Rule 17** of this Court's Rules seeking leave to effect service of the motion for stay and the Court's directions upon those respondents through substituted service, by way of advertisement in a daily newspaper with a wide circulation.

On 9th March, 2021, both motions were listed for hearing before the full Court. However, by virtue of **Rule 53** of this Court's Rules only the motion for stay could be heard by the full Court. As such, the Court directed the motion for substituted service to be heard first by a single Judge of the Court. To save time and obviate delay, the Presiding Judge (the President of the Court) found it expedient to consider the application, sitting as a single Judge.

Having gone through the motion, I am satisfied that the applicant, by the affidavit of service annexed thereto, has demonstrated that not only have reasonable efforts been made by its advocates to trace the 2nd to the 20th respondents and/or their advocates but also that those efforts have come to naught. See **William Ngare & 4 others vs. Public Trustee & 10 others [2015] eKLR**.

I am also convinced that the next best avenue of ensuring the concerned respondents are aware of the motion for stay is through the proposed mode of substituted service.

I accordingly grant the leave sought to effect service of the motion for stay and this Court's directions by an advertisement in a local newspaper with wide circulation within 14 days of the date of this ruling.

Costs of this motion shall be in the intended appeal.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH, 2021.

W. OUKO, (P)

.....

JUDGE OF APPEAL

*I certify that this is a true
copy of the original.*

Signed

DEPUTY REGISTRAR