



REPUBLIC OF KENYA



**Musyoka & 2 others v Munguti & 2 others (Environment & Land Case
60 of 2019) [2023] KEELC 473 (KLR) (25 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 473 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 60 OF 2019**

TW MURIGI, J

JANUARY 25, 2023

BETWEEN

KELLY CHRISTIAN MUSYOKA 1ST PLAINTIFF

PAUL MUTUA 2ND PLAINTIFF

ERIC MWONGELA MUSYOKA 3RD PLAINTIFF

AND

PETER KALENZE MUNGUTI 1ST DEFENDANT

MBEVI KIASA NYAA 2ND DEFENDANT

ADJUDICATION AREA 3RD DEFENDANT

RULING

1. Before me for determination is a Notice of Motion application dated 1st of December, 2022 brought pursuant to the provisions of Order 5 Rule 17 of the *Civil Procedure Rules* 2010, Section 1A, 1B and 3A of the *Civil Procedure Act*, in which the Applicants have sought the following orders:-
 1. That Summons to Enter Appearance and a copy of the Plaint be served on the 1st Defendant by substituted service.
 2. That the substituted service be effected on the 1st Defendant by advertising the appropriate notice on the Nation Newspaper.
 3. That the cost of this application be in the cause.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit sworn by the 1st Plaintiff on even date.



APPLICANTS' CASE

3. It is the Applicants case that the 1st Defendant's physical and postal address are completely unknown and thus, it is has become practically impossible to effect personal service upon him. The Applicants urged the Court to grant the orders sought.

ANALYSIS AND DETERMINATION

4. Having considered the application and the affidavit in support thereof, I find that the only issue that arises for determination is whether the Applicants are entitled to the orders sought.

5. The law that governs the grant of leave to effect substituted service is set out in Order 5 Rule 17(1) of the Civil Procedure Rules of 2010. According to the provisions of that Order, substituted service may be ordered by the Court in the following circumstances: -

17(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 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 gain, or in such other manner as the court thinks fit.

- (2) Substituted service under an order of the court shall be as effectual as if it had been made on the defendant personally.
 - (3) Where the court makes an order for substituted service it shall fix such time for the appearance of the Defendant as the case may be.
 - (4) Unless otherwise directed, where substituted service of a summons is ordered under this rule to be by advertisement, the advertisement shall be in Form No 5 of the Appendix with such variations as the circumstances require.
6. The rules provide for the Court to be satisfied for any reason that the summons cannot be served. The Plaintiff commenced this suit on 14th of August, 2018 and sought for the following orders against the Defendants jointly and severally:-
 1. A declaration that the demarcation and registration of the suit land so as to include the 1st and 2nd Defendants is wrongful and unlawful.
 2. An order that the 1st and 2nd Defendants names and those of their agents and/ or nominees be cancelled from the relevant register for land number 2442 – Ngai Adjudication Section and be replaced with the names of the 2nd and 3rd Plaintiffs respectively.
 3. Costs of the suit and interest.
 4. Any other order that the Honourable Court may deem fit and just to grant.

7. The Plaintiffs are yet to serve the 1st Defendant with the Summons to Enter Appearance and the Plaintiff. The Applicant stated on oath that the 1st Defendant's physical and postal address is unknown to them and thus they are unable to effect personal service. I am satisfied that personal service may not be possible in the circumstances raised in the affidavit.

8. In the end, I find that the application dated 1st of December, 2022 is merited and I allow the same in the following terms: -



1. Leave is granted to the Plaintiffs/Applicants to effect service of the pleadings herein upon the 1st Defendant by means of substituted service in the Daily Nation newspaper on a working day within 21 days from today.
2. The 1st Defendant will be expected to enter appearance within 21 days of the said advertisement.
3. Costs in the cause.

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HON. T. MURIGI

JUDGE

RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 25TH DAY OF JANUARY, 2023.

IN THE PRESENCE OF: -

Court Assistant – Mr. Kwemboi

Ms Kwamboka holding brief for Nzei for the Plaintiffs/Applicants.

