

ARTWELL MAZANGO  
and  
BETHEL MAZANGO  
and  
FOUNTAIN INVESTMENTS (PRIVATE) LIMITED  
versus  
FAY VEERMAK  
and  
FATIMA VERONICA VERMAAK  
and  
SHERIFF OF THE HIGH COURT

HIGH COURT OF ZIMBABWE  
MUNANGATI-MANONGWA J  
HARARE; 17 March 2025

### **Chamber Application**

MUNANGATI-MANONGWA: An application for substituted service is a plea to court to allow a litigant to use alternative means of serving process to another litigant in a manner other than the usual expected manner of service as per r 15 of the High Court Rules 2021. The order granted in such an application is a special order and same is not granted on mere asking. There has to be special circumstances calling for such relief. Due to the absence of averments pertaining to such special circumstances I refused to grant the application by the applicant herein and called for more evidence on why such an application should be granted.

The applicants herein approached this court in terms of r 19 of the High Court Rules 2021 seeking leave to serve an application to compel transfer by way of publication of the process in the Herald Newspaper. The applicants alleged that on 19 February 2025 they instituted proceedings against the respondents under Case No HCH783/25 seeking an order against the respondents to transfer certain piece of land situate in the District of Salisbury called Stand 748 Quinington also known as Subdivision 1 of the remainder of Lot A C Quinington Township measuring 2993 square metres into the names of the first and second applicants. The applicants allege that the process could not be served on the first, second and third respondents at the given address of service as the said respondents could not be located at the last known

address. In order to buttress this averment, the applicants referred to a certificate of service which is annexed to the application. The relevant part of the certificate of service by Brian Watukwa an employee of the applicants' legal practitioner reads as follows:

“On the 20th day of February 2025 I failed to serve the Court Application to compel transfer of immovable property on the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> respondent's as the last known address is now being occupied by a person named Mabhureza who is said to be the new owner of the premises. I failed to locate the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents at No. 1 Honeybear Lane, Greystone Park, Harare.”

Thus, relying on the information provided by their legal practitioner's employee the applicants filed this application.

The rule relied upon reads as follows:

*Substituted service*

19. (1) Whenever it is necessary to effect service of any process or document whereby proceedings are instituted, on any person within the jurisdiction who cannot be served in any of the ways provided for in r 15, the leave of a judge shall be obtained by chamber application made in terms of the rule relating to the making of such applications.

(2) Such application shall be accompanied by a draft of the process or document proposed to be issued and shall set out concisely—

(a) the nature and extent of the claim and the grounds upon which it is based;

(b) the reason why service cannot be effected in any of the ways provided in r 15;

(c) sufficient relevant facts to indicate the best manner in which service may be effected.

(3) On such application a judge shall, by his or her order, give such directions in the premises as he or she deems proper and necessary, having due regard to the place where the defendant is or is believed to be residing and to the other circumstances of the case.

(4) In all cases in which publication is directed, it shall not be necessary to publish the document or documents in an extensive form but the publication of a short form thereof to be approved and signed by the registrar shall be sufficient compliance with the direction of the judge.

(5) Any process or document in such case shall be served in such a manner and subject to such conditions as the judge in each particular case directs.

It is pertinent to note that this rule can only be resorted to after a litigant has tried and noted that they are unable to serve process by way of any process provided for in r15. Apparently, r 15 applies to service of *all* process within Zimbabwe except to the extent that it

is inconsistent to other rules on service provided in the High Court Rules or an order of a judge or court giving a directive on service. The rule provides for different ways and manner of service. It is for this reason that r 19 requires that a litigant seeking leave to utilise an alternative means of service has to “*state the reason why service cannot be effected in any of the ways provided in rule 15.*”

Rule 19 makes it peremptory for the applicant seeking such relief to set out *concisely* the relevant facts to indicate the best manner in which service may be effected. In essence there are two important requirements to be fulfilled being: rendering a satisfactory explanation why the usual ways or means to serve process have not been effective and secondly, a justification on the proposed method of service. In my mind this ties up with the *audi alteram partem* rule which is the right of any party being brought before a court, tribunal or any body to be heard. That right starts from being informed of any process or proceedings that are being instituted and affects or pertains to a party. Thus, the legislature provided for means of service of process upon a party which ensures that a party is aware of any proceedings against them and thereafter they can elect whether to defend or not. This further speaks to the constitutional right to be heard as provided for in s 69 of the Constitution of Zimbabwe. Thus, in my view service of process forms the foundation of the right to be heard. In that regard a deviation from the norm *vis* service of process has to be justified hence the provision that leave of a judge be granted.

In *casu*, the applicant simply relies on an employee’s word that he went to the place of service and found that the premises were now occupied by a new owner. There is no evidence that there was further enquiry even from the new owner as regards an alternative address or whether the respondents were still resident in Zimbabwe. It is also noted from a reading of the file that in the related matter which gave rise to the order they seek compliance of by way of compelling transfer, the respondents were represented. It is not clear whether the erstwhile legal practitioners were ever approached regarding where their clients could be. There is absolute silence as regards any efforts by the applicant to establish the respondents’ whereabouts. Equally there is no information given by the applicants as regards why they believe that publication in the Herald is the best manner in which to effect service. This is against the need to ensure that the respondents get to know of the proceedings against them. Suffice that the Judge in deciding the application is guided by r 15(3) which reads:

(3) On such application a judge shall, by his or her order, give such directions in the premises as he or she deems proper and necessary, *having due regard to the place where the defendant is or is believed to be residing and to the other circumstances of the case.*

Thus, in deciding upon the adequacy of the order regard has to be made to defendant's residential particulars or the party intended to be served's residence and to the circumstances of the case. There has to be some indication that the person to be served is within the jurisdiction where publication is intended to be made. Whilst the applicants have suggested publishing process in the Herald Newspaper there is no indication why such preference is made given that this Newspaper circulates in Harare mostly. The applicants had to believe that despite having moved from the given address, the respondents remain resident in Harare. There is no such averment. The court can thus not simply grant such relief in the absence of supportive evidence that the proposed manner of service is the best in the circumstances. The applicant has the onus to satisfy the court that the proposed manner of service is such as that the person to be served is most likely to be made aware of the process in which he is cited.

It is due to the foregoing that I find that the application is not compliant with the requirements of r 19 and thus cannot be granted without further evidence. In that regard it is ordered as follows:

1. The applicants shall file supplementary affidavits on efforts made to locate the respondents and further justify why the proposed manner of service is best in the circumstances.
2. There shall be no order on costs.

**MUNANGATI-MUNONGWA J:**.....