

Court of King's Bench of Alberta

Citation: Bank of Nova Scotia v Ngoie-Kadila 2026 ABKB 7

Date: 20260105
Docket: 2503 17840
Registry: Edmonton

Between:

The Bank of Nova Scotia

Plaintiff

- and -

Oscar Ngoie-Kadila and Francoise Wakabongo Makaseka

Defendants

**Reasons for Decision
of the
Honourable Applications Judge S. Wanke**

[1] The Plaintiff, The Bank of Nova Scotia (**Scotia**) applies by way of desk application for an order for substitutional service in respect of Francoise Makaseka. The underlying claim is a foreclosure action on a high ratio mortgage with approximately \$900,000 plus costs and interest outstanding.

[2] Plaintiff's counsel provided a legal assistant's affidavit in support of the application, which outlined:

- (a) Counsel sent an email to Ms. Makaseka using an email address provided by Scotia. The email asked if she would prefer service by email to keep costs low or for her to provide an address for service. No response was received to this email.

- (b) Ms. Makaseka is a registered owner of the property subject to the foreclosure and the certificate of title shows an address for her that was provided to land titles when the transfer was registered in 2023.
- (c) A demographic search was obtained on December 11, 2025, which shows a different postal address. The search has been redacted by counsel so that I cannot tell when Ms. Makaseka last updated her demographic information.
- (d) The Affidavit is sworn in support of an application for substitutional service by regular mail to the address from land titles, the address from the demographic search and by email to the email address provided by Scotia.

[3] The application is dismissed.

[4] The starting point is that commencement documents are to be personally served. For individuals, personal service typically requires leaving the commencement document with the individual, having the individual acknowledge receipt of the document by signing for a recorded mail delivery of the commencement document (rule 11.5, *Alberta Rules of Court*) or acknowledge receipt by email (*Toronto Dominion Bank v Halliday*, 2022 ABKB 764). See Justice Acton's comment:

13 The important aspect of personal service is that it gives the Court comfort that the document in question has come to the personal attention of the defendant or respondent in the matter.

Boardwalk Reit Ltd Partnership v Busler, 2006 ABQB 695 at para 13.

[5] The rules governing service are designed to safeguard basic procedural fairness. Without proper notice, a party may be deprived of the opportunity to be heard. Substitutional service is not a means to dispense with personal service at the convenience of a plaintiff.

[6] Rule 11.28 of the *Alberta Rules of Court* allows for substitutional service on affidavit evidence that personal service is impractical. There is no such evidence here.

[7] It is noteworthy that this is an action for close to a million dollars, with the defendant in question apparently residing in Edmonton. The Affidavit discloses no efforts at personal service at all. There is nothing on these facts to suggest that sending a process server to serve the defendant is cost prohibitive or otherwise impractical.

[8] Further, proposing substitutional service of a commencement document by ordinary mail is inappropriate. There is no way to confirm when or if the document is delivered. Courier, process server or Xpresspost all provide delivery confirmation. The significant benefit of knowing commencement documents were delivered and when far outweighs the modest additional cost of those services..

[9] The facts and the law here are neither novel nor complex.

[10] This application is, however, a prime example of the multiple plainly deficient desk applications that are made to the applications judges daily. Substitutional service applications are a significant portion of the desk applications we see. In my experience, of those applications, a third or more are rejected due to improper evidence or orders drafted so poorly they do not merit correcting in pdf. These deficient applications often come from firms who have high volumes of files requiring substitutional service orders, making these deficiencies even more puzzling.

[11] These deficient desk applications are surely contributing to the significant backlog in filing at the clerks' office.

[12] The documents submitted for each desk application must be filed by the clerks and then submitted for review to a justice or an applications judge. Once reviewed by the judge, deficient applications are returned to the clerk, with an explanation of the deficiency. The clerks must process the rejection and return the application to counsel with the explanation. Typically, counsel then submit revised or additional materials. The clerks must then again file those materials and upload them for review by the appropriate judge. Some deficient applications go through this process multiple times, all straining judicial resources.

[13] Desk applications are the responsibility of counsel on the file, not their legal assistants. It is incumbent on counsel to ensure that desk applications have proper evidentiary support and a proper form of order the first time they are submitted. The submission of incomplete, deficient or inappropriate applications delays not only the resolution of individual matters but also contributes to systemic delays that affect all court users.

[14] I expect that the Plaintiff's mortgage provides for costs on a solicitor and own client, full indemnity basis. Notwithstanding any such contractual provision, Scotia is directed to bear its own costs for this desk application and review of this decision. This application was not a reasonable step for Scotia to take on the evidence.

Desk application reviewed on the 18th day of December, 2025.

Dated at the City of Edmonton, Alberta this 5th day of January, 2026.

S. Wanke
A.J.C.K.B.A.

Appearances:

Jonathan J. Bouchier and Kyle R. Smith, MLT Aikens LLP
for the Applicant, The Bank of Nova Scotia

Without Notice to the Defendants