



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**MISC. CIVIL APPLICATION NO. 108 OF 2017**

**ORIGINATING SUMMONS ON AN APPLICATION FOR APPOINTMENT OF GUARDIAN AD LITEM FOR SKR**

**SR**

**LN**

**IW**

**BN**

**JG**

**LW.....EX PARTE/APPLICANTS**

**VERSUS**

**HNK.....INTERESTED 1<sup>ST</sup> RESPONDENT**

**JGK.....INTERESTED 2<sup>ND</sup> RESPONDENT**

**AND**

**AID.....INTENDED INTERESTED PARTY**

**R U L I N G**

1. Six applicants, **SRK, LNK, IWK, BNK, JGK** and **LW** (“Applicants”) filed an Originating Summons on 14<sup>th</sup> of August, 2017 wherein they sought to have the court examine, make inquiry and establish whether **SKR**, their father, (“The Subject”) is of unsound mind, therefore incapable of protecting his interest and once such a declaration has been made, the court do appoint the 6 Applicants jointly to be the subjects *guardians ad litem* and to allow the appointed guardians to manage the affairs of the subject.

2. The said Originating Summons attracted two applications which are now the subject of this ruling. The applications were argued together mainly due to the lapse of time since the matters were brought to court and in the interest of justice.

3. The 1<sup>st</sup> application is dated 24<sup>th</sup> October, 2017 filed by **AID** (“The Interested Party”) seeking to be enjoined as an interested Party on ground that he had entered into a lease agreement with the Subject in respect of Dagoretti/Waithaka/xxx and upon which the Interested Party had expended large amounts of money and the proposed appointment of **guardians ad litem** would affect his interest directly.

4. The 2<sup>nd</sup> application is dated 10<sup>th</sup> December 2017, the same seeks for two prayers. Firstly that 1<sup>st</sup> and 2<sup>nd</sup> Intended Respondents; **HNK** and **JGK** (“Respondents”) be enjoined to the suit and secondly, that the firm of Kinuthia Wandaka & Co. Advocates be granted leave to represent them.

5. If the court finds merit in the Originating Summons it will appointment persons who will from the date of such order take charge of all the interests of the subject including running his estate, and taking care of his health by virtue of Sections 26 and 27 of The Mental Health Act Chapter 248 of the laws of Kenya.

6. It is therefore my view that the application dated 24<sup>th</sup> of October 2017 is misplaced and premature. The same ought to await the outcome of the pending Originating Summons so that the Intended Interested Party may either pursue the Subject if the application fails or the guardian(s) if one or more person are appointed should he have any issue touching on the properties of the subject. Being enjoined will not add any value to the matter.

7. The 2<sup>nd</sup> application dated 10<sup>th</sup> December 2017 is not objected to the extent of the Respondents being enjoined as parties to the suit.

8. The objection relates to the Respondents being represented by Kinuthia Wandaka & Co. Advocates for the sole reason that counsel Mr. Wandaka had received Kshs.1,151,000/- from another law firm pursuant to a lease entered into between the Subject and the Intended Interested Party and counsel is yet to account which places the said advocate in a position of conflict.

9. For now this court is not dealing with validity or otherwise of any transaction between the parties, and/or with the Subject.

The only issue before this court is whether or not to appoint guardian(s) to take care of and run and manage the affairs of the Subject. I therefore find no conflict of interest whatsoever if Kinuthia Wandaka & Co. Advocates act for the Respondents whose main interest is to be enjoined as they too have an interest in the matter being sons of the subject.

10. The outcome of the two applications is that the 1<sup>st</sup> application, dated 24<sup>th</sup> October 2017 is declined.

The second application dated 10<sup>th</sup> December 2017 is allowed in its entirety.

11. Each party to bear their own costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 28<sup>TH</sup> DAY OF NOVEMBER, 2019.**

.....

**ALI-ARONI**

**JUDGE**