



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISC. CIVIL APPLICATION NO. 93 OF 2023**

**SAMUEL NGURE MWANGI (Suing for and on behalf of KANYIRI NGURE**

**(Also known as) ISAAC MWANGI NGURE.....APPLICANT**

**VERSUS**

**1. ROSE WAITHERA NGURE (as administrator of the estate of**

**FRANCIS NGURE GITHUKA Deceased).....1<sup>ST</sup> RESPONDENT**

**2. FRANCIS KANYIRI S/o JOHANA GITHUKA.....2<sup>ND</sup> RESPONDENT**

**RULING**

Before me is a notice of motion dated 7<sup>th</sup> February 2013 filed by the applicant Samuel Ngure Mwangi, suing for and on behalf of Kanyiri Ngure also known as Isaac Mwangi Ngure. The application brought under orders 33 rules 1(2) and 18 and order 32 rules 15 of the Civil Procedure Rules 2010. He seeks the following orders:-

1. That he be appointed guardian ad Litem for Kanyiri Ngure (alias Isaac Mwangi Ngure) a person of unsound mind and to institute suit on the latter’s behalf.
2. That he be allowed to institute the intended suit as a pauper (i.e be exempt from payment of court fees).
3. That costs hereof be in the cause.

The application is based on the following grounds;

1. The applicant is a pauper so is his father who is insane.
2. The applicant’s father’s land has been illegally grabbed by the respondents
3. The lawyers on record are acting pro bono.

Samuel Ngure Mwangi filed a supporting affidavit stating as follows; That he is the son of Kanyire Ngure alias Isaac Mwangi Ngure who is invalid and he seek leave to bring a suit on his behalf as guardian ad litem. That he is a pauper as a squatter leaving on a plot owned by his in laws That the respondents have occupied and inherited land illegally grabbed from his father That the parcels of land occupied by the respondents are all subdivisions of land awarded to his father by the said court judgment and that he

seek to reclaim his father's said land on his behalf. He seeks to be exempt from court fees.

I have considered the application filed. The respondents though served did not attend court neither did they file a replying affidavit opposing this application. The applicant has attached a letter from the District Medical officer DMOH Muranga South District states that Isaac Mwangi Ngure is a patient and has been diagnosed with dementia 2 years ago which has led t permanent subtotal mental in capability and cannot make any legal decisions on his own. There is also a letter from office of the chief of Kangari Location that states that the applicant Samuel Ngure Mwangi resides within his area and is being accommodated by his in-laws and is jobless and that he is not able to meet costs of Court. The applicant has also attached a Judgment C.A 181 of 1997 where Isaac Mwangi was the appellant. He has attached certificates of search on the property in dispute, plus a draft plaint. I have considered all the documents attached and the provisions of order 33 rules 1 (2) and order 32 rules 15. Order 33 (20 states that a person is a pauper is when he is not possessed of sufficient means to enable him to pay the fees prescribed by law for institution of such suits. The applicant is said to be living with in-laws and is jobless. Living within laws and being jobless in my view does not make one a pauper. The applicant has failed to persuade this court that those are sufficient reasons to hold one as a pauper, further under order 33 rules 15 one can only be adjudged as of unsound mind upon inquiry by the court and a finding is made that the person is of unsound mind or mentally infirmity and I find therefore no merit in this application and decline to grant it, its dismissed with no order as to costs.

Orders accordingly

**Dated, signed and delivered this 28<sup>th</sup> day of November 2013**

**R. E. OUGO**

**JUDGE**

**In the Presence of:-**

..... **For the Applicant**

.....**For the Respondents**

.....**Court Clerk**