



**Kimasmas (Suing for and on Behalf of Kabarnet Financial Rural Sacco Ltd as its Chairperson) v Chemon & another (Environment & Land Case E009 of 2024) [2025] KEELC 4200 (KLR) (27 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4200 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KABARNET  
ENVIRONMENT & LAND CASE E009 OF 2024**

**L WAITHAKA, J**

**MAY 27, 2025**

**BETWEEN**

**DAVID KIMASMAS (SUING FOR AND ON BEHALF OF KABARNET FINANCIAL RURAL SACCO LTD AS ITS CHAIRPERSON) ..... PLAINTIFF**

**AND**

**DANIEL K CHEMON ..... RESPONDENT**

**AND**

**JANE JEPKEMOI CHEMON ..... APPLICANT**

**RULING**

**Introduction**

1. Vide a notice of a motion dated 5<sup>th</sup> February 2025, Jane Jepkemoi Chemon (applicant) seeks to be admitted as the guardian ad litem for the defendant herein.
2. The application is brought under section 1A, 1B and 3A of the *Civil Procedure Act*; Order 1 Rule 10(1) and (2) and Order 32 of the *Civil Procedure Rules*.
3. The application is premised on the grounds that the defendant is of unsound mind as he is suffering from dementia; that the applicant is the daughter of the defendant; that the applicant's interest is not adverse to that of the defendant and that the applicant is a crucial party to defend the defendant's interest as the defendant is unable to defend himself and his interest. Further, that the applicant has approached the court with clean hands and without delay.
4. The application is supported by the affidavit of the applicant, sworn on 4<sup>th</sup> February 2024, in which the grounds on the face of the application are reiterated. Besides reiterating the grounds on the face of



the application, the applicant has annexed the following documents in support of the averment in the motion and the supporting affidavit: -

- i. Copy of the applicant's identification card marked JJC1;
  - ii. Copy of the applicant's birth certificate marked JJC 2;
  - iii. Two copies of reports of doctors showing that the defendant has been under medication for dementia, marked JJC 3(a) and (b).
5. The application is undefended.

### **Law Applicable to the Application**

6. The law and procedure for appointment of a guardian ad litem was distilled *in Re NM; Being an Ad litem Application for guardianship* (Family Miscellaneous Civil Case E020 of 2024 (2025) KEHC 530 (KLR) (23 January 2025) (Ruling) where the court stated: -

“The *Mental Health Act* provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons.

Section 2 of the Act defines “person suffering from mental disorder” as follows: -

““person suffering from mental disorder” means a person who has been found to be so suffering under this Act and includes a person diagnosed as psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse.”

Section 26 provides for custody, management and guardianship

1. The Court may make orders-
  - a. For the management of the estate of any person suffering from mental disorder; and
  - b. For the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person....
3. Where upon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder....

Section 26 of the Act gives court the power to make orders regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable but giving preference to a relative.

.....The application is brought under Order 32 Rule 15 of the *Civil Procedure Rules* which provides for appointment of a guardian ad litem for



minors and mentally unsound adults for representation in suits pending in court. ....

15. There being no objection from the siblings of the applicant and the application being well supported as required under the law, it is my considered view that the prayer for appointment of guardian ad litem is well grounded and merited...”

### **Analysis and Determination**

7. I have looked at the application, the affidavit in support and the annexures and I find the sole issue arising from the instant application for determination is whether the applicant has made up a case for being granted the order sought.
8. Regarding that issue, the applicant has by way of affidavit evidence demonstrated that she is a relative of the defendant hence a fit person to be appointed as a guardian ad litem for the defendant under the *Mental Health Act*. She has also provided medical reports showing that the defendant is suffering from mental health, dementia, hence incapable of defending himself in the case before court.
9. Based on the affidavit evidence adduced before this court, the applicable law and the application being unopposed and there being no objection from any family member, I find the application to be merited.
10. Consequently, I admit the applicant, Jane Jepkemoi Chemon, as the guardian ad litem for the defendant in this suit and substitute the name of the defendant in this suit with the name of the applicant, Jane Jepkemoi Chemon.
11. The costs of the application shall abide the outcome of the main suit.
12. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT KABARNET THIS 27<sup>TH</sup> DAY OF MAY, 2025**

**L. N. WAITHAKA**

**JUDGE**

Ruling delivered virtually in the presence of:-

Ms. Adongo for the Defendant/Applicant

Mr. Kiptoo for the Plaintiff/Respondent

Court Assistant: Lilian

