



EKO v LON (Enviromental and Land Originating Summons E008 of 2023) [2025] KEELC 4448 (KLR) (10 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4448 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E008 OF 2023**

**M SILA, J
JUNE 10, 2025**

BETWEEN

EKO PLAINTIFF

AND

LON DEFENDANT

RULING

(Application for appointment of a guardian ad litem on behalf of the defendant; Order 32 Rule 5; defendant shown to be suffering from a mental illness; applicant being wife of the defendant; application allowed)

1. The application before me is that dated 15 March 2024 filed by one CKO on behalf of the defendant. She wishes to be appointed as his guardian ad litem pursuant to Order 32 Rule 15. It is averred that the defendant is incapable of protecting his interests in this case as he has a mental illness. In the supporting affidavit, she has deposed that she is wife to the defendant and that they have been married for over 30 years. She deposes that they have an established long standing marital relationship built on mutual understanding, commitment, and shared responsibility. She is thus deeply invested in the welfare and well-being of the defendant. She has deposed that she understands the defendant’s personal condition. She has deposed that he was diagnosed with a paranoid disorder which has impaired his ability to comprehend legal proceedings, communicate effectively, and engage in defence of his rights. She has annexed a copy of a mental assessment report to support this. She thus seeks to be appointed his guardian ad litem.
2. The application is not opposed and I have given it due consideration.
3. Order 32 of the Civil Procedure Rules, 2010, relates to suits by or against minors and persons of unsound mind. When it comes to minors, Order 32 Rule 1, provides that a suit by a minor shall be instituted through a next friend. Where a minor is sued as defendant, pursuant to Order 32 Rule 3,



the court is to appoint a proper person to be his guardian ad litem. Under Rule 3 (2) and 3(3) an order for a guardian ad litem may be obtained upon application supported by an affidavit verifying that the proposed guardian has no interest that is adverse to that of the minor, and that he is a fit person to be so appointed.

4. Rule 15 of Order 32 provides that rules 1 to 14 of shall apply to persons adjudged of unsound mind. It is drawn as follows :

Application of rules to persons of unsound mind

15. The provisions contained in rules 1 to 13, so far as they are applicable, shall extend to persons adjudged to be of unsound mind, and to persons who though not so adjudged are found by the court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.
5. To the supporting affidavit, there is annexed a mental assessment report by Dr. Mutinda N, a consultant psychiatrist at Kisii Teaching and Referral Hospital. It mentions that the defendant is being treated for a paranoid disorder, and in his conclusion, he has stated that the defendant is ‘mentally unstable and unfit to stand trial.’ I suppose this would equate to defending his interests in a case that he has been sued. I may not have done a personal inquiry on the defendant but I am persuaded by the report, that the defendant is not mentally fit to defend the suit by himself and is in need of a guardian ad litem. The applicant is his wife and has made an elaborate affidavit to demonstrate that she has no interest that is adverse to that of the defendant, and that in fact she is well invested in his welfare. I have no reason to doubt that.
6. I do observe that in this case, the defendant has been sued by the plaintiff who seeks title to a portion of the land parcel West Kitutu/Bomatara/2034, that is registered in name of the defendant, by way of adverse possession. The defendant is entitled to defend this case. So as to safeguard his rights I allow the application and appoint the applicant to be his guardian ad litem.
7. There will be no orders as to costs.
8. Orders accordingly.

DATED AND DELIVERED THIS 10 DAY OF JUNE 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Bonuke for the applicant

No appearance on part of Mr. Ayienda for the respondent

Court Assistant : Michael Oyuko.

