



REPUBLIC OF KENYA



KENYA LAW
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**Mwiandi & 11 others v Nakumana (Environment and Land Case
257 of 2017) [2025] KEELC 5230 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5230 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 257 OF 2017
LC KOMINGOI, J
JULY 10, 2025**

BETWEEN

**EVELYNE GATUNE MWIANDI 1ST PLAINTIFF
JOHN MWINA LILI 2ND PLAINTIFF
ALFONCE KIOKO MUTUKU 3RD PLAINTIFF
JOHN MWOLOLO 4TH PLAINTIFF
JOHN NDUMBI KALELI 5TH PLAINTIFF
MUSYOKI PHILIP MULWA 6TH PLAINTIFF
SAMUEL KAMULI KITONGA 7TH PLAINTIFF
JOSEPH KIVUVA KIOKO 8TH PLAINTIFF
KIENDI MWOLOLO KILINGA 9TH PLAINTIFF
JOHN MAKAU MUINDI 10TH PLAINTIFF
KASYIMA MULWA MUSYA 11TH PLAINTIFF
MUUO NDAMBUKI 12TH PLAINTIFF**

AND

KAPOSHI NJOROGE NAKUMANA DEFENDANT

RULING

1. This is the Ruling in respect of the Notice of Motion dated 25th March 2025. It is brought under: Section 1A, B, 3A, and B *Civil Procedure Act*; Order 32 rule 3, 4, and 15, Order 8 rule 5 of the Civil Procedure Rules and all other enabling provisions of Law.



2. It seeks orders;
 - i. That Jonathan Kaposhi be appointed as the next friend of Kaposhi Njoroge Nakumana.
 - ii. That leave be granted for amendment of the Defendant's statement of defence.
 - iii. Costs of this application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs 1 to 5. It is supported by the Affidavit of Jonathan Kaposhi sworn on the 25th March 2025.
4. He states that he is the Defendant's only son and would want to be appointed as a next friend to defend the suit. This is because since 2012 when this suit was instituted, the Defendant's age has been advancing and he is currently old, ailing, suffers from senile dementia, angina, hypertension and grade 1 diabolic dysfunction and cannot defend the suit. His mother also suffers from senile dementia with memory loss and disorientation and is also incapable of defending the suit. Due to the incapacity of both his parents, it is in the interests of justice that he be appointed as the next friend. He indicated that he was conversant with the suit and information for the just determination of the dispute.
5. The Plaintiffs' in their grounds of opposition dated 10th April 2025, contested the application stating that the application had been overtaken by events when the Court struck out the preliminary objection by the Defendants and that the pleadings had been closed. They deponed that Cicheru J. rendered a judgement (sic) on the preliminary objection and an amendment could not be allowed after judgement had been rendered. They also stated that this Court did not have jurisdiction to hear appointment of administrative under the [Mental Health Act](#) adding that the medical report annexed in the application was defective since Dr. Jane Wanzala was not a psychiatrist. As such, the application should be dismissed.
6. This application was canvassed by way of written submissions.

Submissions of the Defendant/Applicant

7. Counsel submitted that since the filing of this suit 13 years ago, a lot had transpired including death of some parties. That on 10th February 2025, counsel for the Defendant sought an adjournment on grounds that the Defendant could not comprehend the proceedings and there was need to substitute him. Counsel submitted that the Defendant was mentally unwell as per the medical report annexed to the application. Counsel submitted that it was not factual that a judgement had been rendered in this matter and the application was brought under Order 32 rule 15 of the Civil Procedure Rules and not under the [Mental Health Act](#) as contested by the Plaintiffs and the court had jurisdiction to grant the orders sought.

Submissions of the Plaintiffs/Respondents

8. Counsel for the Plaintiffs submitted that this Court only had jurisdiction to determine disputes relating to land and environment. However, the application for determination sought to appoint the applicant as the next friend on grounds of mental instability. Counsel submitted that this was asking the Court to appoint the applicant as an administrator of the Estate of the defendant, which was beyond the jurisdiction of this court and should be dismissed.

Analysis and determination

9. I have considered the Notice of Motion, the Affidavit in support, the response thereto, the rival submissions and the authorities cited. I find that the issues for determination are;



- i. Whether the application for appointment as next friend of the defendant is merited.
 - ii. Whether leave should be granted for amendment of the Defendant's statement of defence.
 - iii. Whether the Plaintiffs' grounds of opposition are merited.
 - iv. Who should bear the costs?
10. The Applicant deposes that he is the biological son of the Defendant and that since the institution of the suit in 2012, the Defendant's health has progressively deteriorated due to advanced age. The Defendant now suffers from senile dementia, angina, hypertension, and other medical conditions that have rendered him incapable of defending the suit. He avers that his mother is equally incapacitated and, being the only capable and willing family member, he seeks to be appointed next friend to defend the suit on behalf of his father.
 11. The Plaintiffs contested this application in their grounds of opposition arguing that this Court was bereft of jurisdiction to determine issues of appointment of administrators and that the matter is part heard and the defence can no longer be amended.
 12. The process of appointing a next friend to defend or prosecute a suit on behalf of a person under a legal disability (such as a minor or a person of unsound mind) is governed primarily by Order 32 Rule 15 of the Civil Procedure Rules which provides that;

“The provisions contained in rules 1 to 14, 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.”
 13. From the above provision it is clear that only a person who has been adjudged to be of unsound mind, can have a next friend appointed to act on his behalf.
 14. No evidence has been presented by the Applicant to confirm that the Defendant has been adjudged to be of unsound mind.
 15. Under the *Mental Health Act* (Cap 248 Laws of Kenya) the “court” means the High Court. I find that this Court has no jurisdiction to hear and determine an application of this nature even if it were to be brought before it. There is no such application before this court.
 16. Section 26 and 28 of the *Mental Health Act*, provides the procedure to be followed. An applicant has to file the petition before the High Court together with several documents before a person can be adjudged to be of unsound mind. It is after this, then this court can be moved.
 17. In the case of *MMM Vs. AMK* (2016) KEHC 474 (KLR) Mativo J (as he then was) held..... “The correct interpretation of order 32 rule 15 of the Civil Procedure Rules, 2010 contemplated a judicial inquiry. The words used in the rule were “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”. That was an inquiry prescribed by the law under the rule where two stages ought to be complied with to satisfy the rule
 - a. Questioning the person by the court
 - b. Medical evidence



The first part had not been complied with hence no inquiry had been held as provided under the rule.

Another important and necessary detail which needed to be followed in the judicial inquiry was that the questions and answers in the inquiry were to be recorded and would form part of the record to satisfy the requirement that a proper inquiry was conducted as contemplated under the order 32 rule 15.

It was necessary for the Court to conduct a judicial inquiry and form an opinion that the person in question was incapable of protecting his/her own interests. The following principles applied:-

- a. Order 32, Rule 15 placed persons of unsound mind or persons so adjudged in the same position as minors for purposes of Rules 1 to 14.
- b. Order 32 Rule 15 applied not only to a person adjudged to be of unsound mind, but also to a person of weak mind.
- c. Where it was alleged that a party to a suit was of unsound mind, and the other party denied it, the Court would hold a judicial inquiry, and come to a definite conclusion, as to whether by reason of the unsoundness of mind or mental infirmity, he was incapable of protecting his interests in the suit. Mental infirmity would even be due to physical defects, if it rendered him incapable of receiving any communication, or of communicating his wishes or thoughts to others.
- d. Whether a person was of unsound mind or mentally infirm for the purpose of the rule and the extent of the infirmity had to be found by the Court on inquiry.
- e. Where the question of unsoundness of mind arose not only under order 32, rule 15 of the Civil Procedure Code but was also one of the issues in the suit, the Court had ample jurisdiction to enquire into that question, and for that purpose seek medical opinion.
- f. The enquiry would consist not only of the examination of the witnesses produced by either party, but also of the examination of the alleged lunatic by the judge, either in open court or chambers, and as Courts were generally presided over by lay-men, as a matter of precaution, the evidence of medical expert would be taken.
- g. Of course, the opinion, of a doctor, as was the opinion of any other expert, under the *Evidence Act*, was only a relevant piece of evidence.
- h. The Court would also compel the attendance of the alleged person before it, and to submit himself for medical examination...

Applying the principles to the facts of the instant case, for the court to find that the Respondent was incapable of protecting his



interests, the Court was required to hold an inquiry as provided under order 32 rule 15 of the Civil Procedure Rules, 2010 and strictly follow the procedure stipulated in the stated authorities; that was to examine the said person in Court and consider the medial evidence. The two fold procedure had not been done, yet it was prescribed under the law. It was necessary to have a full-fledged enquiry, and after the inquiry the Court would then decide whether the Respondent suffered from infirmity of mind, and whether it was of such a character that prevented him from safeguarding his interests.

Since no inquiry had been conducted, the orders sought at the instant stage were premature and if granted, the same would offend the clear provisions of order 32 rule 15 of the Civil Procedure Rules, 2010 and could be challenged on that ground alone. However, the interests of justice would not be met the application was dismissed and therefore, in the interests of justice and to enable the court to wholly and effectively determine the issue and fully satisfy the requirements of order 32 rule 15 of the Civil Procedure Rules, the Respondent ought to be produced in court for the purposes of an inquiry by the court to establish whether he was incapable of protecting his interests by reason of unsoundness of mind”.

18. I am guided by the above authority in finding that this application is not merited.

19. The same is dismissed with costs to the Plaintiffs/Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 10TH JULY 2025.

L. KOMINGOI

JUDGE.

In the presence of

Mr. Agina for the Plaintiffs.

Mr. Achillah for the Defendant.

Court Assistant – Mateli.

