



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC CASE NO. 9 OF 2021

ISAAC KIBIEGO KITUR.....PLAINTIFF

VERSUS

FLORA YEGO.....1ST DEFENDANT

LEAH YEGO.....2ND DEFENDANT

JANE YEGO..... 3RD DEFENDANT

RULING

The Application

1. The application dated 25/5/2021 and filed in court on 26/5/2021, has been brought under Sections 1A, 1B, 3 3A & 63(e) of the Civil Procedure Act, Order 32 Rules 4 and 15, of the Civil Procedure Rules, Article 159(2)(d) of the Constitution of Kenya. The plaintiff seeks the following orders:-

(a) ...spent

(b) That this honourable court may be pleased to appoint SOLOMON KITUR as Guardian Ad Litem for the plaintiff herein.

(c) That costs of this application be in the cause.

2. The application is supported by the affidavit sworn on 25/5/2021 by the Counsel of the plaintiff. The grounds upon which the application is made are that the plaintiff is very old, sickly and has become partially deaf and it is difficult for him to hear, comprehend what is going on and to speak on his own hence he is incapable of protecting his interests in this suit; that the said **Solomon Kitur** is the son to the plaintiff and he is the one who has been taking care of the plaintiff and understands the plaintiff well; that the proposed guardian has no interest in the matters in controversy in suit adverse to that of the plaintiff and that he is a fit person to be so appointed; that the said **Solomon Kitur** has consented to being appointed as Guardian Ad Litem for the plaintiff; that the defendants will not be prejudiced in any way and that it is in the interest of justice that this application be allowed.

The Response

3. The defendants filed a replying affidavit sworn on 3/6/2021 by **Jane Yego** on her own behalf and on behalf of co- defendants. She deponed that the application is meant to scuttle the expeditious hearing of the suit herein; that the proposed guardian is misleading the plaintiff and is the source of perennial disputes regarding the suit land; that there is no medical evidence presented to show that the plaintiff can not speak or hear and that on the contrary the plaintiff can hear and speak. A further replying affidavit sworn on 3/6/2021 by **Winnie Cheptoo** a granddaughter to the plaintiff details how as recently as **May 2021** she had a lengthy verbal engagement with the plaintiff whom she states could speak without any difficulty.

Submissions

4. The defendants filed their submissions on 30/6/2021. The plaintiff relied on the application and affidavit.

Determination

5. I have considered the application, the responses and the submissions filed. The issue for determination is whether **Solomon Kitur** should be appointed as the Guardian *Ad Litem* for the plaintiff herein.
6. I must reject the application for three reasons. One is that the supporting affidavit that delves into factual matters in dispute is sworn by counsel to the plaintiff which is impermissible.
7. Secondly, even if this court were to deem the supporting affidavit and the annexures thereto as admissible, a perusal of the purported medical evidence presented in the affidavit falls short of proof that the plaintiff can not speak or hear.
8. Thirdly, the respondents who appear to know the plaintiff well have given sworn evidence that the plaintiff can speak and hear. His granddaughter too has sworn an affidavit stating the same thing.
9. Consequently the application dated **25/5/2021** is hereby dismissed with costs to the defendants. This suit shall be mentioned on **20/7/2021** for the fixing of a hearing date.

It is so ordered.

Dated, signed and delivered at Kitale via electronic mail on this 15th day of July, 2021.

MWANGI NJOROGE

JUDGE, ELC, KITALE.