

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC CASE NO. 42 OF 2020

FRANCIS KIBET ARAP SEREM.....PLAINTIFF

VERSUS

MICHAEL KIMTAI NDIWA.....DEFENDANT

RULING

The Application

1. By a Notice of Motion dated **10/6/2021** and filed in court on the same date brought under **Section 1A, 1B and 3A** of the **Civil Procedure Act** and **Order 9 Rule 2** of the **Civil Procedure Rules**, the plaintiff/applicant sought the following orders:

(1) ...spent

(2) That the plaintiff/applicant be and is hereby granted leave to file in court the duly registered Power of Attorney No. P.A 73777/1 of 27/5/2021 and that the same be deemed duly filed.

(3) That the duly appointed donee of the plaintiff/applicant Alexander Kiptanui Serem be and is hereby allowed to appear before court on 16/6/2021 for hearing to adduce evidence as per the Power of Attorney.

(4) That henceforth the said donee, Alexander Kiptanui Serem be and is hereby granted leave to appear on behalf of the plaintiff/applicant, adduce evidence, execute all documents and take up conduct of the matter to its conclusion.

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

2. The application is supported by the affidavit of the plaintiff sworn on **10/6/2021**. The grounds on the face of the application and the supporting affidavit are that the plaintiff is of advanced age and unwell and thus unable to attend court to testify in the suit, and has for that reason donated his powers in the matter to the said Alexander Kiptanui Serem through a registered power of attorney. There is no response by the defendant on the instant application though served and an affidavit of service filed in court on **15/7/2021**.

3. The plaintiff filed his written submissions on **2/7/2021**. I have perused the court record and found no submissions filed on behalf of the defendant.

4. I have considered the application and the annexure which is a specific power of attorney and which is apparently registered at the Land Titles registry at Nairobi, granting the named donee power to pursue the prosecution of the case on behalf of the plaintiff. I have also considered the case law cited by the applicant, that is, **John Kamau Gachina Vs Sofia Salim Karama 2016 eKLR**. In that case it was stated as follows:

“The defendant already filed his documents and served the plaintiff. He has chosen to give his defence through a recognised agent. There is a provision the law allowing him to do so. I see no reason why the plaintiff should object to the manner chosen by the defendant to present his case. It is my considered opinion and I so hold that a party is at liberty to authorise a recognised agent to act on his/her behalf at any stage of the proceedings. Such appointment need not be on the basis of incapacitation of the donor of a power of attorney but out of choice. Consequently I find no merit in the objection and hereby dismiss it accordingly.”

5. I find that the application dated **10/6/2021** has merit and the same is hereby granted in terms of **prayers nos. 2, 3 and 4** thereof. An original of the power of attorney shall be filed in the court record before any further proceedings are undertaken by or through the said *Alexander Kiptanui Serem*. The costs of the application shall be in the cause. This matter shall be mentioned on **30/9/2021** for the fixing of a hearing date.

Dated, signed and delivered at Kitale via electronic mail on this 9th day of August, 2021.

MWANGI NJOROGE

JUDGE, ELC, KITALE.