



**In re DKC (Miscellaneous Application E003 of 2024)
[2024] KEHC 15462 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15462 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS APPLICATION E003 OF 2024**

JK SERGON, J

DECEMBER 5, 2024

**IN THE MATTER OF AN EX-PARTE APPLICATION BY
WKK FOR APPOINTMENT OF A GUARDIAN FOR DKC**

IN THE MATTER OF

WKK APPLICANT

RULING

1. The application coming up for this court's determination is an ex parte originating summons dated 8th May, 2024 seeking the following orders;
 - (i) Spent
 - (ii) That this Honourable Court be pleased to appoint the Applicant WKK as a Guardian ad Litem for DKC for the purposes of engaging in all legal matters pertaining to his wellbeing including the management of his property and finances.
 - (iii) That the costs of the application be in the cause.
2. The application is supported by grounds on the face of it and the supporting affidavit sworn by WKK the Applicant herein.
3. The Applicant avers the said DKC is his biological father and that he has been suffering from a medical condition known as senile dementia affecting his cognition and memory and is currently seeking treatment and medication at the Kericho District Hospital and therefore in a vulnerable state and unable to handle matters pertaining to his general wellbeing, property and financial issues included.
4. The Applicant avers that his father is seized of properties that can be utilised for his welfare including the payment of medical bills and that given his medical condition he is unable to manage the properties. The Applicant avers that in the circumstances he cannot legally access the said properties without an order of the court.



5. The Applicant avers that his siblings who have attained the age of majority have no objection to his appointment as a guardian ad litem to take care of the welfare of their father and all that appertains to his general wellbeing.
6. The Applicant avers that it is in the best interest of the said DKC that he be appointed as a guardian ad litem to take care of his general wellbeing and manage his properties and any other legal issues that might arise therefrom albeit under the general supervision of this Court.
7. The Applicant avers that the orders as sought are not inimical to the interests of his father and/or any other party who may generally be interested in the welfare and property ownership of the said DKC.
8. The Application is not opposed.
9. This court directed the Applicant to file a further replying affidavit and a medical report by a doctor who specialises in Mental Health and/or Psychiatry.
10. The matter came up for hearing and Mr. Okok, the Learned Counsel for the Applicant informed the court that he had uploaded a medical report on the Case Tracking System. At the time of writing this ruling the medical report had not been uploaded on the Case Tracking System.
11. I have considered the application and the sole issue for this court's determination is whether DKC is incapable of protecting his interests on account of infirmity.
12. The application is brought under Order 32 Rule 15 of the Civil Procedure Rules, 2010 which provides as follows; " 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. The instant application is properly before this court, the instant case properly falls under the circumstances envisaged in the provisions of Order 32 Rule 15 of the Civil Procedure Rules, 2010.
14. In MMM v AMK (Miscellaneous Civil Application 51 of 2015) [2016] KEHC 4741 (KLR) (13 June 2016) (Ruling) under similar circumstances, Mativo J. (as he then was) while referring to several authorities interpreting similar provisions contained in the Indian Civil Procedure Rules observed as follows; "Thus, guided by the above authorities and the express provisions of order 32 rule 15, I find that it is necessary for this court to conduct a judicial inquiry and form an opinion that the person in question is incapable of protecting his/her own interests."
15. In MMM v AMK (supra) Mativo J. set out the following principles which I find applicable in this case; " a. Order 32, rule 15 places 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 applies not only to a person adjudged to be of unsound mind, but also to a person of weak mind.
 - c. Where it is alleged that a party to a suit is of unsound mind, and the other party denies it, the court must hold a judicial inquiry, and come to a definite conclusion, as to whether by reason of the unsoundness of mind or mental infirmity, he is incapable of protecting his interests in the suit.
 - d. Mental infirmity may even be due to physical defects, if it renders him incapable of receiving any communication, or of communicating his wishes or thoughts to others.



- e. Whether a person is of unsound mind or mentally infirm for the purpose of the rule and the extent of the infirmity has to be found by the court on inquiry.
 - f. Where the question of unsoundness of mind arises not only under order XXXII, rule 15 of the Civil Procedure Code but is also one of the issues in the suit, the court has ample jurisdiction to inquire into that question, and for that purpose seek medical opinion.
 - g. The enquiry should 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 are generally presided over by lay-men, as a matter of precaution, the evidence of medical expert should be taken.
 - h. Of course, the opinion of a doctor, as is the opinion of any other expert, under the [Evidence Act](#), is only a relevant piece of evidence.
 - i. The court may also compel the attendance of the alleged person before it, and to submit himself for medical examination. If the alleged person is in custody, the court may direct the next friend or any other person having custody to produce him before the medical expert for examination.
 - j. Where the precaution of judicial enquiry is not observed, the person cannot be declared lunatic, and a guardian cannot be appointed for him.
 - k. When a person is adjudged as being of a lunatic or unsound mind irregularly and improperly, and notice was not served on him, and a guardian alone was allowed to appear and defend the suit and decree was passed owing to the guardian not putting up a proper defence, the alleged lunatic can treat the decree against him as an ex parte decree, and have it set aside under the provisions of the [Civil Procedure Rules](#).”
16. In *MMM v AMK (supra)* the court set out a two fold procedure for the judicial inquiry to wit examination of the said person in court and medical evidence. It is therefore necessary to have a full-fledged enquiry, and after the inquiry the court will then decide whether the said suffers from infirmity of mind, and whether it is of such a character that prevents him from safeguarding his interests.
 17. Applying the above precedent to the facts of the present case, I find that for this court to ascertain and make a determination that prima facie, DKC is incapable of protecting his interests, this court is required to hold an inquiry as provided under Order 32 Rule 15 of the [Civil Procedure Rules](#), 2010.
 18. Accordingly, I find that since no inquiry has been conducted, the orders sought at this stage are premature and if granted at this stage, the same will offend the clear provisions of Order 32 Rule 15 of the [Civil Procedure Rules](#) 2010. I hereby make the following orders;
 - a. That a medical report prepared by a Psychiatric Doctor be filed in respect to the said DKC.
 - b. That the said DKC be produced in court for the purposes of an inquiry by the court for the court to establish whether by reason of unsoundness of mind or mental infirmity, he is incapable of protecting his interests.
 - c. That pursuant to the above order, the parties herein are directed to appear before this Court on 5th February, 2025 for judicial examination/inquiry.
 - d. Costs be in the cause.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 5TH DAY OF DECEMBER, 2024.

J.K. SERGON



JUDGE

In the presence of:

C/Assistant – Langat

Kiprono holding brief for Okok for the Applicant

