



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

MISC. APPLICATION NO. E039 OF 2021

FRANCIS KOOME .....APPLICANT

VERSUS

M'IRINGO M'KIRICHIU .....1<sup>ST</sup> RESPONDENT

LAND ADJUDICATION OFFICER IMENTI NORTH .....2<sup>ND</sup> RESPONDENT

THE LAND REGISTRAR MERU .....3<sup>RD</sup> RESPONDENT

THE HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT

RULING

1. Through an application dated **12.10.2021**, the court is asked to find **M'Nchebere M'Mugwika** suffers from mental disease, is unable to protect his interests and hence proceed to appoint one **Francis Koome Mburugu** a next friend and guardian ad litem.
2. The application is supported by an affidavit sworn on **2.10.2021** attaching a medical report by **Dr. Timothy K. Riungu**.
3. **Order 32 Rules 4 & 15** of **Civil Procedure Rules** as read together with **Sections 26 and 27** of the **Mental Health Act** requires the court to make a judicial inquiry before a person is declared unfit to protect his interests so as to appoint a guardian ad litem.
4. Further **Order 32 Rule 15** requires an originating summons be filed. The applicant has not filed either a petition or an originating summons accompanied by consents from the relatives.
5. Similarly the properties of the subject have not been specified. Further the subject has not been presented before the court for a judicial inquiry to be undertaken. Clearly the Miscellaneous application cannot by all intents and purposes amount to a petition or an originating summons.
6. In the premises the notice of motion herein is struck out with no order as to costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 15<sup>TH</sup> DAY OF DECEMBER, 2021**

**In presence of:**

Miss Thuo for applicant

Court Assistant – Kananu

**HON. C.K. NZILI**

**ELC JUDGE**