

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 103 OF 2012

MONICA KAREGI MUGAMBI1ST PLAINTIFF

ANDREW MURUNGA MUGAMBI.....2ND PLAINTIFF

VERSUS

AMM.....1ST DEFENDANT

DIOCESE OF MERU TRUSTEES (REGISTERED)2ND DEFENDANT

GKKAPPLICANT/GUARDIAN AD-LITEM

RULING

1. The application dated 22.5.2018 is brought pursuant to provisions of order 32 rule 3 and 15 of the civil procedure rules for appointment of a guardian ad-litem for the 1st defendant (AM) who is a person of unsound mind. The application is supported by the grounds on the face of the application and the affidavit of GKK. It is averred that AM is senile and is not able to manage his affairs. The application is unopposed.

2. In the case of **Isaac Kipkemboi Chesire & 4 others vs Joseph Kimitei Kwamboi & 7 others (2016) eKLR**, the court while dealing with a case of someone who had suffered a stroke and was unable to protect his interest held that:

“The law on management of an estate of a mentally ill person is enshrined in the mental health Act. Orders for the appointment of a person to manage the estate of any person suffering from mental disorder are provided for under section 26 of the mental health act. The import of this section is that the order for guardianship ad litem is to be made by the court which is defined at section 2 as the High Court. It follows that orders for the management of any property of a mentally disabled person can only be made by the High Court. This court finds that it has not been established that Matilda Rose Sawe is the guardian ad-litem of the estate of John Malan Sawe hence the application for substitution is not well founded.....”.

3. It follows that the order for guardian ad litem ought to be obtained from the High Court and thereafter, an application for substitution can be made before this court.

4. The upshot of my finding is that the application dated 22.5.2018 is not merited. The same is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 22ND JANUARY, 2020 IN THE PRESENCE OF:-

C/A: Kananu

Ojiambo holding brief for Kaumbi for plaintiffs

Gikonyo holding brief for Rimita for defendants

Both plaintiffs

2nd defendant

HON. LUCY. N. MBUGUA

ELC JUDGE