



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Civil Suit 1925 of 1998

JULIUS NYUMU & OTHERS.....PLAINTIFFS

VERSUS

GITHUNGURI CONSTITUENCY

RANCHING CO. & OTHERS.....DEFENDANTS

RULING

1. This is an application brought by way of Notice of Motion under Order 32 Rule 3(1). The applicant seeks that Mr. Edward Kabera Kimuhu nephew to Veronica Wairimu Chege be allowed to act as her guardian ad litem in this case as Veronica Wairimu Chege is aged 80 years old senile, illiterate and is unable to present her case in Court. The applicant also seeks that costs be in the cause. The ground on which the application is based on is that Veronica Wairimu Chege is senile and because of her age and illiteracy she cannot present her case in Court. That her husband died on 26/6/98 and she has no child. The application is supported by the affidavit of Edward Kabera Kimuhu who depones that he is the nephew of Veronica Wairimu Chege the 25th plaintiff as shown in the grant dated 14/4/09. That she is over 80 years old having been born in 1930. She is senile and illiterate, suffers from loss of memory and is unable to present her case in Court. That he has no interest in her plot other than to help her in this case. At paragraph 5 he depones that he is willing to be appointed her guardian *ad litem* to enable her case to be ably represented in Court.

The respondent did not oppose the application.

2. I have considered the application before me. Although there is no medical report on the plaintiff's mental status. I will believe what is deponed by her nephew who has attached her identification card and the limited grant of letters of administration *ad litem*. The applicant herein has not attached the consent to be appointed guardian *ad litem* which he mentions at paragraph 5. I take it that it was an oversight of his counsels, but order 32 rule 3(1) relates to minors the provisions of rule 15 state that 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 of so adjudged are found by the Court or inquiry, by reasons of unsoundness of mind or mental infirmity to be incapable of protecting her interest in suing or being sued.

3. Veronica Wairimu Chege an administrator of the 25th plaintiff is said to be senile and illiterate and suffers from loss of memory. I will allow the application and grant prayers (a) and (b) of the application dated 26/3/12.

4. I note that the applicant mainly cited Section 32 Rule 3 (1) without citing Cap 21 Civil Procedure Rules hence I will not penalize the applicant for that, in light of the provisions of article 159 (2) (d) of the constitution.

Prayers (a) and (b) of the application dated 26/3/11 are granted.

The applicant shall file the consent of being guardian *ad litem* within fifteen (15) days from the date of this ruling.

Orders accordingly.

Dated, signed and delivered this 9th day of July 2012

R. OUGO

JUDGE

In the Presence of:-

..... For the Plaintiffs

..... For the Defendants

KabiruCourt Clerk