



Oyatsi & 2 others (Suing as Executors of the Estate of the Late Kipyator Nicholas Kiprono Biwott - Deceased) v Nzai & 2 others (Environment and Land Case 21 of 2021) [2025] KEELC 7119 (KLR) (15 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7119 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE 21 OF 2021
FM NJOROGE, J
OCTOBER 15, 2025

BETWEEN

DESTERIO ANDADI OYATSI 1ST PLAINTIFF
KENNETH HAMISH WOOLER KEITH 2ND PLAINTIFF
ELISABETH KLEM 3RD PLAINTIFF
SUING AS EXECUTORS OF THE ESTATE OF THE LATE KIPYATOR
NICHOLAS KIPRONO BIWOTT - DECEASED

AND

STEPHEN CHARO NZAI 1ST DEFENDANT
THE LAND REGISTRAR, KILIFI 2ND DEFENDANT
THE HON. ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. By a notice of motion dated 16/6/2025 and filed in court on 17/6/2025, the 1st Defendant's counsel invoked Sections 26 of the *Mental Health Act*, Chapter 248, Laws of Kenya, Section 1A, 1B and 3A of the *Civil Procedure Act* and Order 32, Rule 15 of the Civil Procedure Rules, 2010 to seek the following prayers:
 1. That the 1st Defendant Stephen Charo Nzai be declared as mentally incapable of articulating his defence and be excused from the proceedings and taking down his evidence;
 2. That the 1st Defendant's adult son George Mwarandu Charo be appointed as Guardian Ad litem to the extent of representing the interests of the 1st Defendant in this matter and/or testifying on his behalf;



3. That costs be in the cause.
2. The application is premised on the grounds enumerated on the face of the motion. The motion is supported by the Affidavit of George Mwarandu Charo, the eldest son of the 1st Defendant, sworn on 16/6/2025. He deposes that his father, Stephen Charo Nzai, suffers from episodes of hallucinations, delusions, irritability, and disorientation, and has been diagnosed by a Psychiatric Specialist with acute psychosis and depression. He avers that despite medical intervention, his father remains largely incapable of articulating himself, and accordingly prays that the Court excuses his father from personally participating in the proceedings and grants him leave to represent his interests and testify on his behalf, noting that he is fully aware of the facts of the case. Annexed to the affidavit is a medical report marked GMC 1. In order to appreciate the doctor's opinion, it is ideal to reproduce it here verbatim: -

Re:- Stephen Charo Nzai – ID/No:- xxxxxxxx, Age:- 57 Years, Sex:- Male Residence:- Jacaranda

Mr. Stephen, a 57 years old male was evaluated in our clinic. He appeared approximately his stated age.

Grooming was adequate and co-operative. He reported that his mood is desperate because unknown people are claiming his land. Affect characterized by intermittent anxiety generally associated with the above problem. Well oriented to place and person but confused with the date. He has hallucination and delusion sometimes.

Conclusion: - Patient with onset of acute psychosis in depression.

Accord him the necessary assistance.

Beatrice Kinge'ndo Melindi

Psychiatric Specialist.

For:- Medical Superintendent

Malindi Sub-County Hospital

3. The law governing the custody of patients with mental illness, their guardianship and the management of their affairs is the *Mental Health Act*, Cap 248. Section 2 of the said Act provides that: -

“person with mental illness” means a person diagnosed by a qualified mental health practitioner to be suffering from mental illness, and includes—

- (a) a person diagnosed with alcohol or substance use disorder; and
- (b) a person with suicidal ideation or behaviour;”

4. Section 26 of the same Act further provides: -

(1) An application for an order for the management and administration of the estate of a person with mental illness may be made to the court, in the following order of priority, by—

- (a) a supporter of the person with mental illness; or
- (b) the representative of the person where the person with mental illness has not appointed a supporter.



- (2) An application under subsection (1) shall be submitted together with an affidavit setting out—
 - (a) the grounds upon which the application is made;
 - (b) the full particulars as to the property and relatives of the person to whom it relates; and
 - (c) a certified true copy of the admission or treatment and particulars in respect of person duly admitted as a person with mental illness.
 - (3) A notice of the application under subsection (1) shall, in such manner as the court may direct, be served upon the—
 - (a) person in respect of whom the application is made; or
 - (b) where an application is made by a supporter to the representative of the person with mental illness.
 - (4) Despite the provisions of subsection (3) the court may make an order for the service upon any other person to whom, in the opinion of the court, notice of the application should be given.
 - (5) The court may waive the requirement for service under subsection (3)(a) if the court considers service impracticable, inexpedient or would be ineffectual.
 - (6) The court may, in order to have a report of the mental capacity and condition of such person in relation to whom the application is made, require the person to present themselves at a place and time appointed by the court, for the—
 - (a) court to examine the person; or
 - (b) person to be examined by a qualified registered mental health practitioner.
5. Having considered the application, the affidavit in support, the annexed medical report, and the applicable law, I am satisfied that the 1st Defendant has been medically diagnosed with acute psychosis in depression and presently lacks the mental capacity to effectively articulate his defence in these proceedings. The provisions of Section 26 of the *Mental Health Act* empower this Court to make appropriate orders for the protection and representation of such a person, including the appointment of a suitable relative as guardian for purposes of managing his interests.
6. The application is unopposed, and the deponent, being the eldest son of the 1st Defendant, has demonstrated knowledge of the facts of this case and the ability to represent his father's interests fairly. I find merit in the application and hold that it is in the best interest of justice to grant the orders sought. I therefore allow the application and issue the following orders:
- a. The 1st Defendant, Stephen Charo Nzai, is hereby declared mentally incapable of articulating his defence and is excused from personally participating in these proceedings for taking down his evidence;
 - b. b) The 1st Defendant's adult son, George Mwarandu Charo, is hereby appointed as guardian ad litem to the extent of representing the interests of the 1st Defendant in this matter and testifying on his behalf.
 - c. c) The Costs of the application shall be in the cause.
 - d. This cause shall be mentioned on 20/11/2025 for further directions.



DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 15TH DAY OF OCTOBER, 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

