



REPUBLIC OF KENYA



**Nkoyie v Kimemia & 2 others (Environment and Land Case
E026 of 2024) [2025] KEELC 7855 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7855 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND CASE E026 OF 2024**

**MN MWANYALE, J
NOVEMBER 13, 2025**

BETWEEN

SUKEL OLE NKOYIE PLAINTIFF

AND

FRANCIS THUITA KIMEMIA 1ST DEFENDANT

THE LAND REGISTRAR TRANSMARA WEST 2ND DEFENDANT

THE HON. ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. Coming up for determination is the application dated 04/06/2025 filed by the Plaintiff/Applicant Mr. Sukel Ole Nkoiyel. The first 3 prayers of the application are spent. Prayer 3 having been granted in terms the Head of records and information technology of Transmara West Sub-County Hospital as well as Mr. Shadrack M. Olentaiya having been summoned and subjected to cross-examination on the authenticity of the medical/mental health assessment report dated 17/09/2024, and contents therein. The ground in support of the application are interalia: -
 - i. The 1st Defendant/Respondent filed an application dated 6th February 2024 alleging that the Applicant is suffering from memory loss and mentally unstable and cannot be fit to institute the suit therein.
 - ii. A medical/mental health assessment report dated 17th September 2024 formed part of the annexures in the contravention of Article 31(c) of *the constitution* and the said report was obtained in a manner that violate the rights to privacy and ought to be excluded as it would be detrimental to a fair trial.
2. The application was supported by the supporting affidavit of the Applicant who reiterated the grounds in support of the application and annexed a copy of the title for Trasmara/Kimintet 'D'/1680 in his



name, a copy of medical/ mental health assessment report dated 17/09/2024, a copy of a letter to the head of health records and information technology at Transmara West sub-county hospital.

3. The court allowed the cross-examination of the Head of Health records and Information Technology at Transmara West Subcounty Hospital as well as Mr. Shadrack M. Olentaiya a mental Health officer of the said Hospital on the authenticity of contents of the said medical report. From the cross-examination, it emerged that whereas the mental health officers report dated 17.09.2024 was authentic having been authored by Mr. Shadrack Ole Ntaiyia of the said Hospital, the same was unlawfully, unprocedural and without the consent of the Applicant obtained by the 1st Respondent and used against the Applicant in court. The court after taking into account the cross-examination, the Replying affidavit of the 1st Respondent directed the advocates to address it via written submissions on whether the said medical report can be used in court without the consent of the owner, and the court should rely on the medical report, to subject the plaintiff for assessment of his mental status, as had been hitherto ordered.
4. It is important that a brief background of the facts leading to the filing of the application is given so as to give context to the issues at hand.
5. The 1st Respondent Mr. Francis T. Kimemia, filed an application dated 06.02.2025, which sought the examination of the plaintiff by way of an enquiry of the court for the court to establish whether by reason unsoundness of mind or mental infirmity he is capable of instituting the suit herein.
6. On 25/02/2025, when the matter came up, Miss Bosibori learned counsel for Mr. Kimemia brought to the court's attention of the filing of application dated 06/02/2024. The Plaintiff's then counsel on record Ms. Pion indicated that she was not opposed to the application as was Ms. Osebe for the 2nd and 3rd Defendant.
7. The court thus granted the prayer for cross-examination of the plaintiff so as to assess his mental status and capacity to initiate and/or file this suit.
8. However, before the cross-examination was conducted on the Plaintiff Mr. Muganda of Sagana Biriq Advocates come on record for the plaintiff and filed the application herein interalia alleging that the mental/medical health assessment report that had been the basis of the application dated 06.02.2025 was not authentic and/or had been obtained without the consent of the plaintiff and as a result he sought for cross-examination of the Records Officer of Transmara West sub-county Hospital and the mental health officer, Mr. Sukel Ole Nkoiyel the officer who had authored the said medical report.
9. Upon their cross-examination the court made a finding that whereas medical report was authentic, as it emanated from Transmara West Subcounty Hospital it had been issued to the 1st Defendant/ Respondent unprocedurally, unlawfully without the consent of the Plaintiff and hence the court directed the counsel to submit on the two issues as earlier identified at paragraph 3.

Applicant's Submissions

10. With respect to the 1st issue as to whether medical records can be used in court without the consent of the owner, it is the Applicant's submissions that Article 31 of *the constitution* guarantees every individual right to privacy including protection of personal information from arbitrary or unlawful collection, use or disclosure, that the said right cannot be subject to the limitation under Article 24.
11. Reliance on this limb of submission was placed on the decisions in the case of Kenya Plantation and Agricultural Workers Union Vs. James Finlay (K) Limited 2013 (KEELRC) as well as the decision in Roshantra Ebrahim Vs. Ashleys Kenya Limited and 3 Others 2016 eKLR as quoted in the decision in HIV and Aids Tribunal at Nairobi in SNW Vs. Asha Gilan Ghulan HAT No. 003 of 2018.



12. The Applicant further submitted that the unauthorized access of the medical report was in contravention of section 5(2) of the Health Act, Data Protection Act 2019, as well as section 6(1) of the Access to information Act 2016.
13. The Applicant further placed reliance of the decision in the case of Njonjo Mue and Another Vs. Chairperson of Independent Electoral and Boundaries Commission and 3 Others, on illegally obtained evidence.
14. The Applicant thus urged the court to:
 - i. Find and hold that medical records cannot be introduced or relied upon in court without the express consent of their owner.
 - ii. Declare that the impugned medical/mental health assessment report dated 17/09/2024 is inadmissible for want of authentication, certification and consent.

1st Defendant/ Respondent Submissions

15. On the first issue, the 1st Respondent submits that order 32 Rule 15 applies to a person of unsound mind requires upon an allegation that a party is unsound mind, the court ought to hold a judicial inquiry and come to a definite conclusion, hence their application dated 06.02.2025.
16. On the 2nd issue, the 1st Defendant/Respondent urges the court in submission that reliance should be placed on the Medical Assessment report and placed reliance of the decision in the case of MMM Vs. AMK Miscellaneous application 51/2015 to buttress the point.

Issues for Determination

17. The application having been heard partially by way of cross-examination of the Health Records Officer and the mental health officer Mr. Shadrack M. Olentaiya and partially by way of written submissions and the court had framed two issues for determination that the counsels submitted on, hence issues for determination are framed as follows to wit;
 - i. Whether or not the application is merited and in deciding this, the court shall determine,
 - a. Whether the medical/mental assessment report can be used without the consent of the owner.
 - b. Whether the court should rely on the medical/mental assessment report, so as to cross-examine the plaintiff.
 - ii. What orders ought to issue.
 - iii. Who bears the costs of the application.

Analysis and Determination

18. On issue number 1, as to whether the application is merited, the decision in the case of Kenya Plantation and Agricultural workers union Vs. James Finlay Limited 2013 KEELRC 422 KCR, held and deemed interalia that;

Medical records are part of private information protected under Article 31(c) of the Constitution; and similarly, the court held in its decision, this private information ought to be protected under the right to privacy as was held in Rshanara Ebrahim Vs. Ashleys Kenya Limited. The above decisions were cited by the Applicant.



19. Since medical records fall under the category of private information protected under Article 31(c) of the constitution as observed in the above decisions it follows that the owner of the said information must give his consent for its usage.
20. In the instant case whereas the medical assessment report was prepared by the mental health officer of Transmara West subcounty Hospital, the medical assessment was meant for purposes of referral only, and it was not officially requested for and issued by the custodian thereof, the health records officer and hence it was obtained irregularly in the first instance and unlawfully on contravention of section 5(2) of the Health Act which provides that

“Every person shall have the right to be treated with dignity, respect and have their privacy respected in accordance with the Constitution and this Act.” It was thus illegally obtained by the 1st Respondent and certainly without the consent of the Applicant.
21. Having found that medical records are private information and having also found that the medical/mental health assessment report in relation to the Plaintiff was issued to the 1st Defendant, irregularly, and in contravention of section 5(2) of the Health Act thus unlawful, and illegally the admission of the medical/mental assessment report, would offend the provisions of Article 50(4) of the Constitution. Can the court use the same?
22. The issue of admissibility of illegally obtained evidence and whether the same is admissible in civil cases was settled by the Court of Appeal in its decision in the case of Okiya Omtatah Okoiti and 2 Others Vs. A.G and 4 Others, the court of Appeal, in interpreting Article 50(4) of the Constitution held inter alia

“80. The interpretation given by the court in that case that Article 50(4) of the constitution applies only to criminal law and not civil law is, with respect doubtful. Article 50 of the constitution deals generally with “fair hearing. In Article 50(1) for instance reference is made to “every person” as having the right to a fair hearing. This is in contrast to Article 50(2) which is specific “every accused person”. In our new, under Article 50(4) if a court determines that admission of evidence obtained in a manner that violates any right or fundamental freedom in the Bill of rights would be detrimental to the administration of justice, the court may reject it irrespective of whether it is in connection with a civil or criminal trial. This view accords, we believe with the Supreme court decision in Njonjo Mue and Another Vs. Chairperson of Independent Electoral and Boundaries Commission and 3 Others...”
23. Having laid out the prevailing legal position, it follows that the medical/mental health assessment report dated 17.09.2024, having been obtained irregularly, illegally and without consent of the Plaintiff cannot be used in a court of law and the same ought to be expunged from the court record.
24. The Respondent urges the court to proceed and conduct the inquire of the mental status of the Plaintiff and his capacity to have instituted these proceedings; as provided for under order 35 of the Civil Procedure Rules and as was held in MMM Vs. AAK cited by the Respondent.
25. In light of the fact that the medical/mental assessment report was obtained illegally the court agrees with the submissions, of the counsel for the Applicant that the illegally obtained medical report cannot be relied in a court of law and the same should be expunged, from the court record and thus in answer to issue No. 1 the court finds the application is merited.



26. On what orders ought to issue and turning to the application dated 06.02.2025 which had allowed the cross-examination of the plaintiff so as to inquire on his mental status based on the medical report that was obtained illegally and which ought to be expunged, it follows therefore that in so far as the order to cross-examine the plaintiff was issued based on inter alia the illegally obtained evidence, which ought to be expunged, in any event, the court hereby sets aside the order issued on 25.02.2025 for cross-examination of the plaintiff, on his status and capacity to institute the proceedings.
27. The court notes that by setting aside the order issued on 25.02.2025, no prejudice will be occasioned to the 1st Respondent and the other Defendants, shall have time to cross-examine the plaintiff during the trial process.
28. The upshot is that the application dated 04.06.2025 is thus allowed in terms that;
 1. That medical/mental health assessment report dated 17.09.2024 is hereby expunged from the record.
 2. The order issued on 25.02.2025 allowing the cross-examination of the plaintiff so as to assess his mental status and/or capacity to sue is hereby set aside, in its entirety.
 3. Costs of the application are awarded to the Applicant.

Dated at Kilgoris this 13th day of November, 2025.

Hon. M.N Mwanyale

Judge

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Muganda for the Plaintiff/Applicant

Ms. Bosibori for the 1st Defendant

N/A for Mr. Ranah for the 2nd and 3rd Defendant

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