

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 317 OF 2017**

PAUL LODI KISHANTO (as legal representative of -

The Estate of KISHANTU OLE MOPEL, deceased).....1<sup>st</sup>

PLAINTIFF

JOSEPHINE MALOIY (as guardian ad litem of

GEOFFREY MORIASO OLE MOLOIY).....2<sup>ND</sup>

PLAINTIFF

-VERSUS-

THE ATTORNEY GENERAL AND 29 OTHERS.....

.....DEFENDANTS

**RULING**

***(In respect of the notice of motion dated 29<sup>th</sup> November 2025 by the 2<sup>nd</sup> - 7<sup>th</sup> Defendants seeking to set aside the order appointing Josephine Maloiy as the guardian ad litem of Geoffrey Moriaso Maloiy)***

## **Introduction.**

1. By way of a motion dated 25<sup>th</sup> November 2025, the 2<sup>nd</sup> – 7<sup>th</sup>

Defendants seek two main orders; framed in following terms.

(a) THAT the 2<sup>nd</sup> Plaintiff, Josephine Maloiy, be and is hereby directed to furnish cogent medical evidence from a qualified and licensed medical practitioner to prove the alleged mental infirmity/incapacity of Geoffrey Moriaso Maloiy within thirty (30) days.

(b) THAT in default of compliance with above, the appointment of Josephine Maloiy as guardian ad litem of Geoffrey Moriaso Maloiy be set aside, from the proceedings for want of locus standi.

2. The application which is premised on the provisions of **Order 32, rules 1, 2, 3 and 15 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Act** is based on the grounds on the face of the application and on the affidavit of Joel M. Kabaiku sworn on 25<sup>th</sup> November 2025. The Applicants contend that the application seeking the appointment of Josephine Maloiy as guardian ad litem of her husband, Geoffrey Moriaso Maloiy, dated 12<sup>th</sup> August 2021 was not served upon

them nor their counsel and was allowed unopposed. They further assert that the application was not supported by medical evidence proving that Geoffrey Moriaso Maloiy was of unsound mind or incapable of protecting his own interests in this matter.

3. The Applicants opine that the allegations of mental infirmity and reclusive behavior are unsupported by any cogent evidence. They are speculative and may have been advanced to delay, frustrate or derail the expeditious disposal of this suit, contrary to the provisions of the law under **Order 32 of the Civil Procedure Rules** which requires proof of unsoundness of mind or mental infirmity before a guardian ad litem is appointed.
4. In opposition to the application by the 2<sup>nd</sup> - 7<sup>th</sup> Defendants, the Plaintiffs filed grounds of opposition dated 6<sup>th</sup> January 2026 asserting that the application was incurably defective and sought for its dismissal with costs.
5. The application was heard by way of oral submissions. The Applicants reiterated the grounds in support of the application submitting that the absence of the medical evidence meant that the appointment of the guardian ad litem was defective and unprocedural.

6. In response, the 2<sup>nd</sup> Plaintiff through her advocate submitted that the application appointing her as guardian ad litem was duly served upon the advocates then on record for the Applicants. It was allowed way back in the year 2021, on 30<sup>th</sup> September 2021. If the Applicants were dissatisfied with her appointment, they ought to have appealed or sought to review the order issued by this court.

**Issues for Determination.**

7. Having considered the application and the response by the Plaintiffs, as well as the oral submissions by the parties, the critical issue for determination is whether the application is competent.

**Analysis and Determination.**

8. The 2<sup>nd</sup> - 7<sup>th</sup> Defendants seek to set aside the order appointing Josephine Maloiy as guardian ad litem of Geoffrey Moriaso Maloiy; rather, her removal as guardian ad litem on the basis that her appointment as such was defective without any supporting evidence and therefore unprocedural.

9. **Order 32 rule 9** contemplates the removal of a guardian ad litem other than on grounds of retirement. **Rule 9** allows the

removal of a guardian ad litem during the pendency of a suit, on an application made either on behalf of the ward or by a Defendant, on the basis that, i) the interests of the guardian ad litem are adverse to those of the ward, ii) where the guardian ad litem is connected with a Defendant whose interest is adverse to that of the ward as to make it unlikely that the interests of the ward will be properly protected, iii) where the guardian ad litem fails to do his duty, iv) where the guardian ad litem ceases to reside in Kenya or v) for any other sufficient cause. The court if satisfied may order the removal of the guardian ad litem and make such other order as to costs as it thinks fit.

10. The application before me is not premised on **rule 9** or any of the grounds cited therein. It seems to me to be more of a review application, but again it has not cited any of the grounds for review under **Order 45 rule 1 of the Civil Procedure Rules.**

11. The advocate for the Applicants in his rejoinder to the submissions by the Plaintiffs invoked the inherent authority of the court. While it is true that this court has inherent power to protect and regulate its own processes, the power does not extend to

assumption of jurisdiction where none is conferred by statute. This is not a proper case for invoking the inherent jurisdiction of the court.

12. The Applicants have not cited any provisions of the law which allows the court to undo what it had already done under rule 3 of Order 32 of the Civil Procedure Rules. There is no provision for setting aside such an order under the order. The court agrees with the submissions by the advocate for the Plaintiffs that the only option available to the Applicants then would be review under **Order 45** of the **Civil Procedure Rules** or an appeal against the order to the Court of Appeal.

13. Consequently, the court finds and holds that the application dated 25<sup>th</sup> November 2025 by the 2<sup>nd</sup> – 7<sup>th</sup> Defendants/Applicants is incompetent and has no basis in law.

14. The application is hereby struck out with costs to the Plaintiffs.

It is so ordered.

**Dated Signed and Delivered at Kajiado Virtually this 3<sup>rd</sup> Day of March 2026.**

**M.D. MWANGI**  
**JUDGE**

**In the virtual presence of:**

Mr. Mukire h/b for Mr. Kabaiku for the Applicants

N/A by the Respondents

Court Assistant: Mpoye

**M.D. MWANGI**  
**JUDGE**