



REPUBLIC OF KENYA



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**Chelaite v Rono (Environment and Land Case E010 of 2025)
[2025] KEELC 5485 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5485 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E010 OF 2025**

**A OMBWAYO, J
JULY 24, 2025**

BETWEEN

ALICEN CHELAITE APPLICANT

AND

EDWIN KIPROP RONO PLAINTIFF

RULING

Brief Facts

1. The Applicant filed the instant application dated 23rd May, 2025 seeking the following orders:
 1. Spent.
 2. That the Honourable court be pleased to substitute the Plaintiff herein with the Applicant, Miller Komen Ronoh, as the former is aged and senile.
 3. That upon granting of (2) above, the said substituted party Miller Komen Ronoh to take over the prosecution of this suit to its conclusion.
 4. That this suit be fixed for hearing of the main suit on a priority basis.
 5. Any other order(s) that this Honourable Court deems fit and just to grant.
 6. Costs of this application be in the cause.
2. The Application was based on grounds set out and supported by the Affidavit Miller Komen Ronoh the Applicant sworn on 23rd May, 2025. He stated that he was related to the Plaintiff by reason that she was his guardian and that he was her caregiver along with other family members. He further stated that the Plaintiff instituted the suit with the aim of asserting her legal right to access her property L.R Njoro Ngata Block 2/6718 (Kirobon 'A') which the Defendant inhibits her access for purposes of settling her medical bills.



3. He stated that the Plaintiff was over 90 years of age with delicate physical health which since institution of the suit has rapidly deteriorated. He added that she has been in and out of hospital throughout the proceedings. He further stated that the Plaintiff is senile which renders her vitality in the near future uncertain and would leave her in a physical condition that would prevent her from actively participating in the proceedings.
4. He went on to state that the Plaintiff and close family are tangles in a financial bind as she needed to dispose the suit property to enable liquidation for purposes of settling the medical expenses that would arise. He stated that their attempt to settle with the Defendant have not borne any fruit. He added that close family members are apprehensive that the Defendant was banking on the Plaintiff's demise so as to take full control of the suit property and disposing it in a manner contrary to the

Plaintiff's interest.

5. He stated that he would wish that he be substituted in place of the Plaintiff for purposes of this suit as he harbored no interest adverse to the Plaintiff. He stated that the Plaintiff vide a general power of attorney donated him and Tessy Jeruto jointly and thus his substitution fell within the powers donated by the Plaintiff in exercise of trust. He urged the court to grant the orders sought.

Response

6. The Defendant filed his Replying Affidavit sworn on 11th June, 2025 where he averred that the application was a choreographed attempt to have the court sit on its ruling delivered on 16th May, 2025. He further averred that the instant application is intended to delay the timeous conclusion of the main suit. He averred that he had raised the issue of the Plaintiff's cognitive uprightness and flagged the manipulation of the Plaintiff and the Applicant. He also averred that through the Plaintiff's supplementary affidavit in her application dated 8th February, 2025, she made averments to the effect that her latest health review had given her a clean bill of cognitive uprightness.
7. He averred that the allegations of senility on the part of the Plaintiff was unsupported by medical records thus unsubstantiated. He added that the same could only be concluded upon examination of the Plaintiff. He averred that the application was premature for reasons that no medical reports have been availed nor any inquiry done by the court into the mental uprightness of the Plaintiff.
8. He also averred that the power of attorney had defects such as the date of execution by the Donor on 27th October, 2023 and the same registered on 28th August, 2024 while the Donor purportedly appeared before the registrar on 16th September, 2024. He further averred that the Plaintiff filed the suit on 12th February, 2025 when the power of attorney had already been issued to the Applicant and Tessy Rono. The Defendant averred that for purposes of order, the Plaintiff be subjected to medical examination and a medical report filed. He added that thereafter an inquiry be then conducted into whether the Plaintiff's mental infirmity was incapable of protecting her interests in the suit. He urged the court to dismiss that application with costs.

Submissions

6. Joy, learned counsel for the applicant .Alicen Chelaite submits that the plaintiff is severely unwell in Nairobi. Liquidation and substitution is to enable the plaintiff settle her bills. The title deed depicts a joint ownership. The original owner was Alicen Chelaite before the joint ownership.
7. The gravamen of the respondents submission through learned counsel Kirwa, is that the applicant has not applied to act as a guardian ad litem as required by the law when a party is alleged to be suffering



from mental illness. That the applicant has not availed any record of mental sickness to enable the court make its independent finding.

Analysis and Determination

8. This court has carefully considered the application and replying affidavit and the main issue for determination is whether the Plaintiff should be substituted with the Applicant. It is the Applicant's claim that the Plaintiff is senile and old hence unable to prosecute her case. In his supporting affidavit, the Applicant attached copies of the Plaintiff's recent medical invoices which pointed to her frail health. Notably, the same did not certify that she labored under mental ill health claims. The Defendant on the other hand contends that there was no evidence adduced to confirm that the Plaintiff is senile.
9. Section 125 of the *Evidence Act*, Cap 80 provides as follows:
 - “(1) All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease (whether of body or mind) or any similar cause.
 - (2) A mentally disordered person or a lunatic is not incompetent to testify unless he is prevented by his condition from understanding the questions put to him and giving rational answers to them.” Further Order 32 Rule 15 of the Civil Procedure Rules, 2010 provides:

“Application of rules to persons of unsound mind.
10. 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 so adjudged are found by the court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.’ [Emphasis mine]
11. In the case of *Wainaina V Mucheru & another; Kamau (Applicant)* [2023] KEELC 16393 (KLR) the court held as follows:

“In the application, the Applicant has merely made allegation as to the extent of the 1st Defendant's mental infirmity and attached a copy of his National Identity, which states that he is 92 years old.

Old age is not synonymous with mental infirmity. This court has no expertise on issues of mental health and would very much appreciate the production of a medical report to aid it in making an inquiry and reaching a correct finding. Medical diagnosis is essential and the applicant has failed to attach any.

34. In the absence of medical evidence, I am unable to make a finding that the 1st Defendant is unable to protect his legal interest on account of memory lapse.”
12. In the instant case, it is not in dispute that the Applicant has not annexed any documentary evidence to show that the Plaintiff is senile. It is clear from the above that the question of fitness to testify in court is a matter that rests, not on the opinion of the Applicant, but upon the inquiry of the court.
13. In view of the foregoing it is this court's view that the application for substitution by the Applicant has been made prematurely and can only be granted once the court has had opportunity to examine the Plaintiff. In addition, upon its enquiry, should the court find that she is prevented from having conduct



of the suit by reason of mental disorder, the Applicant will only be allowed to substitute the Plaintiff upon obtaining guardian ad litem over her estate. The upshot of the above is that the application is dismissed, with costs to be borne by the Applicant.

It is so ordered.

HON. JUSTICE ANTONY O. OMBWAYO

NAKURU ENVIRONMENT AND LAND COURT

2025-07-24

