

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

MISCELLANEOUS CIVIL APPLICATION NO E0096 OF 2026

ARRAHAM KIPROPCHOGE(Suing as the next friend to **SUSAN SAMBAI CHOGE**).....

APPLICANT

RULING

1. Before this court is an Ex- Parte Notice of Motion brought under **Order 32 Rule 15 and Order 51 rule 1 of the Civil Procedure** rules and all other enabling provisions of the law and dated 22nd April , 2026 seeking the following orders:-

1) Spent

2) THAT the Honourable court to be pleased to appoint the applicant to act as next friend of SUSAN SAMBAI CHOGE and be allowed to prosecute Eldoret ENVIRONMENT AND LAND COURT CASE NO 76 OF 2014, NO E005 OF 2023 and ELC NO E006 OF 2023 on her behalf.

3) That costs of the proceedings be in the cause.

2. The application is premised on the affidavit of the applicant and on grounds that:

a) The honourable court has conducted an inquiry on the capacity and ability of the plaintiff to prosecute the matters and found that due to mental infirmity and age she is incapable of protecting her interests in land reference number PLATEAU/KIPKABUS BLOCK 4 (LELEMOKWO) 22 the subject of the proceedings .

3. I have had occasion to consider the application. Of determination is whether the Applicant has met the legal threshold for the appointment sought.
4. The law governing representation of persons under disability is found under **Order 32 of the Civil Procedure Rules**. **Order 32 Rule 15** provides that the provisions relating to minors apply equally to persons suffering from unsoundness of mind or mental infirmity who are incapable of protecting their interests in litigation. The Rule states:

“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.”

5. Further, Order 32 Rule 4(1) of the Civil Procedure Rules provides that any person of sound mind and who has attained majority may act as next friend provided that his or her interests are not adverse to those of the person under disability.
6. The purpose of the law is to ensure that persons incapable of safeguarding their own interests are afforded protection by the court through representation by a suitable person. The court, in exercising this jurisdiction, is guided by the welfare and best interests of the person under disability and whether the proposed next friend is fit, willing and free from conflict of interest.
7. In **Openda v IOI (Suing as Father and Next Friend of RO), 2025 KEHC10427 (KLR)** the Court emphasized that a

next friend must demonstrate fitness to act and absence of interests adverse to the person under disability.

8. Having considered the application, the affidavit evidence on record and the applicable law, the Court is satisfied that sufficient basis has been laid to warrant the appointment of the Applicant as next friend of **SUSAN SAMBAI CHOGE**. The Court is further satisfied that the appointment is necessary for the proper prosecution and protection of her interests in the pending suits.
9. Accordingly, the prayer is merited and the Court makes the following orders:

a. The Applicant is hereby appointed as next friend of SUSAN SAMBAI CHOGE for purposes of prosecuting Eldoret Environment and Land Court Case No. 76 of 2014, ELC No. E005 of 2023 and ELC No. E006 of 2023 on her behalf.

b. The Applicant shall be at liberty to execute all necessary pleadings, applications and documents and to take all lawful steps necessary for the prosecution of the said matters for and on behalf of SUSAN SAMBAI CHOGE.

c. Costs of the application shall be in the cause.

Dated signed and delivered this 11th day of May 2026

A. K. NDUNG'U

JUDGE