

REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT OF KENYA AT KAKAMEGA

ELC NO. 125 OF 2013

BEN KULOVA KATAMBANI:.....PLAINTIFF

VERSUS

NGERESA WEKHANYA:.....DEFENDANT

RULING

The application is exparte and dated 26th April 2016 and brought under order 32 Rules 4, 12 & 15 of the civil procedure rules and sections 1A, 1B 3 & 3A of the Civil Procedure Act seeking the following orders;

1. THAT this Honourable court be pleased to appoint PAUL NGERESA WEKHANYA as guardian ad litem to the defendant herein.
2. THAT costs be in the cause.

The grounds are that the defendant herein is a sick man and he is not able to do this case. The plaintiff shall not be prejudiced in any way if this application is allowed. The application is further grounded on the affidavit of BEATRICE NELIMA MUNIALO. She submitted that she is an advocate of the High Court of Kenya practicing as M/s. B.N. Munialo & Co. Advocates. Her firm has the conduct of this case on behalf of the defendant herein and she is duly authorized to swear to this affidavit. The defendant herein instructed us to act for him in 2013 whereof they filed all the pleadings on his behalf. That he thereafter fell sick and it has become very difficult to get further instructions from him as he is sick. That she is informed by his family and more particularly Paul that he comes in and out and at times they do not know where he goes. Annexed hereto and marked 'BNM1' is a letter from the doctor attesting to that fact. That with the above reasons the defendant herein is not in a position to comprehend anything and cannot be able to proceed with this case and will only be fair and just that PAUL NGERESA WEKHANYA as a guardian ad litem on his behalf. That the said Paul Ngeresa Wekhanya has no adverse interest to that of the defendant. That the guardian ad litem is the son of the defendant herein.

This court has considered the applicant's submissions. Advocate for the defendant has stated that it has become difficult to get instructions from her client as he is sick Annexed thereto and marked 'BNM1' is a letter from the doctor attesting to that fact. I find this application has merit and grant the same as prayed.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 12TH DAY OF JULY 2017.

N.A. MATHEKA

JUDGE