



Njeru v Mwenga & another; Muriuki (Applicant) (Environmental and Land Originating Summons 26 of 2021) [2024] KEELC 5943 (KLR) (18 September 2024) (Ruling)

Neutral citation: [2024] KEELC 5943 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 26 OF 2021
A KANIARU, J
SEPTEMBER 18, 2024**

BETWEEN

NYUMERO NJERU PLAINTIFF

AND

OBED KIBICHO MWENGA 1ST DEFENDANT

LOICE KARUGI NGARI 2ND DEFENDANT

AND

ONESMUS IRERI MURIUKI APPLICANT

RULING

1. Before me for determination is a notice of motion dated 20.01.2023 filed by Onesmus Ileri Muriuki on behalf of the plaintiff. In the application he is seeking to be appointed as Guardian Ad Litem of the plaintiff. He has made the application on the grounds that he is a son to the plaintiff who is now over 80 years old and who has become physically and mentally infirm due to his advanced age. He attached to his application a letter from the plaintiff's doctor showing that the plaintiff is suffering from memory lapses and senile dementia and therefore he is unable to follow court proceedings.
2. The 1st respondent on his own behalf and on behalf of the 2nd respondent responded to the application via a replying affidavit dated 06.03.2023. He stated that they would not be opposed to the applicants application provided that the plaintiff was produced in court for examination by the court to be satisfied that the plaintiff is unable to conduct his case. That failure to do so the application be dismissed with costs.
3. The application was canvassed through written submissions. The applicant's submissions were filed on 22.09.2023. It was submitted that the 1st respondent did not oppose the application in principle and only wished for the plaintiff to be presented in court for assessment. That the medical report by the



plaintiff's doctor has not been disputed. That the role of the applicant who is seeking to be appointed as the plaintiff's guardian ad litem if permitted will be limited to articulating the plaintiff's case. That the plaintiff will suffer prejudice in the event that the application is dismissed since this will amount to denying the plaintiff a chance to have his claim heard on merit.

4. The respondents filed two sets of submissions on 10.09.2023 and on 29.02.2024. It was submitted that section 2 and 26 of the *Mental Health Act* (Cap 248) provide for the care of persons who are suffering from mental disorder, custody of their persons and for the management of their estates. That the court is mandated to take care of the mental lapse of litigants, to allow persons of good faith who are close to the litigants to act on their behalf as their guardian ad litem. That in arriving at such a conclusion the court must be presented with evidence that the party is senile and mentally challenged.
5. Further, it was submitted that the applicant has produced evidence showing that the plaintiff is old as he is 80 years old. That he also annexed a doctor's report signed by Dr. G.O Njiru of Embu Level 5 hospital showing that the plaintiff has memory lapses and showing features of senile dementia. However the respondent's challenged the doctor's report on allegations that the doctor who prepared the same was a General Medical Officer and practitioner and not a medical practitioner authorized and licensed to assess mental fitness. It was urged that the report be disregarded by this court. It was submitted further that the defendant is equally of old age yet competent to defend himself in this case. That the plaintiff is the only party with the true facts to this case and ought to present him before court for it to make a decision on merit. The respondents were of the opinion that the application ought to be dismissed with costs to them. The case of *CNK & GBA v JWO & PO* [2022] eKLR was proffered in support of the submissions.
6. I have considered the application, the response made to it, and the parties' submissions. I find that the issue for determination is:
 - a. Whether the applicant ought to be appointed as Guardian Ad Litem of the plaintiff.
 - b. Who bears the costs of the application.
7. The *Mental Health Act* provides for the care of persons who are suffering from mental disorder, custody of their persons, and for the management of the estate of such persons.

Section 2 of the Act defines "person suffering from mental disorder" as follows:-

"person suffering from mental disorder" means a person who has been found to be so suffering under this Act and includes a person diagnosed as psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse."

Section 26 provides for custody, management and guardianship:

- 1) The Court may make orders
 - a) For the management of the estate of any person suffering from mental disorder; and
 - b) For the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person.
- 2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate of the guardian of any such person.
- 3) Where upon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is



capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder.

8. The applicant made available a copy of a medical report from Embu Level 5 hospital prepared by Dr. Njiru G.O on 14.10.2022 stating that the plaintiff was noted to have memory lapses with other features of senile dementia. The doctor went on to note that the plaintiff was not able to articulate his facts and thus could not be able to follow court proceedings. The respondents were opposed to the medical report being relied on to confirm the plaintiff's state of mind as they were of the opinion that the doctor who examined him was not qualified to conduct a mental assessment as he was not a psychiatrist. However, no medical report from a psychiatrist or any other doctor was produced to counter the doctor's assessment. If the respondents were unsatisfied by Dr. Njiru's report, nothing stopped them from having the plaintiff examined by a psychiatrist of their choice and present their own evidence in court. Having failed to make available any medical evidence to the contrary, this court is satisfied that Dr. Njiru's medical report is conclusive evidence of the mental status of the plaintiff.
9. Having confirmed from the doctor's report that the plaintiff is suffering from a mental disorder as per Section 2 of the *Mental Health Act*, I also find that due to the medical condition contemplated under Section 26 of the Act, he is unable to manage the proceedings of the instant case. The said provision also gives this court the power to make an order regarding management of the estate of any person suffering from a mental disorder to any near relative or any suitable person. The applicant has stated that he is the son of the plaintiff. There has been no evidence to the contrary. The applicant being the son of the plaintiff is thus a close relative. It is also notable that the respondents were not opposed to the application in strict terms but only required the plaintiff to be presented for examination by the court. This however is unattainable as the court does not have the medical expertise to conduct such an examination.
10. For the foregoing reasons, the court finds that the notice of motion application dated 20.01.2023 has merit and allows the same in the following terms:
 - a. The applicant Onesmus Ileri Muriuki is appointed Guardian Ad Litem of the plaintiff in so far as the conduct of Embu ELC Case no 26 of 2021 (OS).
 - b. Costs of the application to be in the cause.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 18TH SEPTEMBER, 2024.

In the presence of Ms Muthoni Mboi for Guantai for respondent, Eddie Njiru for Rose Njeru for Applicant.
Court Assistant - Leadys

A. KANIARU

JUDGE – ELC, EMBU

18.9.2024

