



**In re SN (Miscellaneous Civil Application E059 of 2021)
[2024] KEHC 451 (KLR) (26 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 451 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
MISCELLANEOUS CIVIL APPLICATION E059 OF 2021
SN MUTUKU, J
JANUARY 26, 2024**

IN THE MATTER OF

KOS APPLICANT

RULING

The Application

1. The applicant has filed this *ex parte* Originating Summons (the Application) under order 32 rule 15 and order 51 rule 1 of the [Civil Procedure Rules](#) and section 1, 3, 3A of the [Civil Procedure Act](#) and all enabling provisions of the law seeking an order that the applicant KOS of national identity card no xxxx be appointed as Next Friend for SON (the Subject) for the purposes of prosecuting ELC Case No 199 of 2018, *SON vs DYS & 6 others*, filed in the Environment and Land Court at Kajiado.
2. The grounds in support of the application are that the subject is suffering from severe pneumonia and senile dementia which puts him in vulnerable state of mind and unable to prosecute or defend any suit on his own behalf; that there is pending suit before he ELC Kajiado where the subject is an party; that the subject is the registered owner of parcel of land known as Kajiado/E-K/xxxx which is the subject of the said case; that the applicant is the son of the Subject and is versed with the facts of that case and that it is in the best interest of justice to appoint the applicant as Next Friend.
3. I directed that the matter be heard orally to enable the court receive evidence from the Applicant and the doctor who has been treating the subject. I also directed that a consent of all family members of the subject be filed.

Oral Evidence

4. On September 18, 2023, I received evidence from Dr Frank Were who testified on behalf of Dr Koskei Robert who had been attending to the Subject and who had gone on retirement. Dr Were produced a report prepared by Dr Koskei. The report, dated March 10, 2022 and produced as exhibit 1, shows that the Subject was not oriented in time and place or person. He could not tell the time or people



of where he was; that the Subject was incoherent and that he was a very old man, was unkempt and shaking. The findings of the doctor were that the Subject was suffering from senile dementia, had lost his memory and could not remember anything and that he was suffering from psychosis.

5. The doctor testified that the subject was put on medication to manage his condition and that the subject could not manage his personal affairs without assistance.
6. The applicant testified that the subject is his father and was aged 93 years; that he is not able to come to court and testify because he was sickly and could not manage to travel; that the Subject is not able to attend to his case before the ELC because he has no memory of events and is also sickly; that the applicant is able to advance the interests of the Subject and represent him in the pending case.
7. The applicant further testified that he has brothers and sisters and that he was the first born of the family; that the rest of the family were aware of the case and had given their consents to have the applicant appointed as next friend of the subject.
8. Through a Further Affidavit sworn on the January 18, 2024, the consent of the adult members of the family of the Subject has been forwarded to court together with the a letter from the Chief of Keekonyokie North Location dated November 9, 2023 confirming that the applicant is the eldest son of the subject and that the family has appointed him to be in charge of the family affairs including the ELC Case No 199 of 2018.
9. I have considered this matter and I am satisfied that from the evidence adduced in court, the Subject is not able to manage his own affairs. For this reason, I hereby allow the *ex parte* Originating Summons and appoint the applicnat KOS as next friend of the Subject. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 26TH JANUARY 2024.

S. N. MUTUKU
JUDGE

