



**BKN v JNN (Miscellaneous Application E041 of 2023)
[2024] KEHC 436 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 436 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS APPLICATION E041 OF 2023
PN GICHOHI, J
JANUARY 25, 2024**

BETWEEN

BKN PLAINTIFF

AND

JNN DEFENDANT

RULING

1. Under a certificate of urgency and through the firm of Ochillo & Company Advocates, the Applicant moved this Court by way of an ex-parte Originating Summons under Order 32 Rule 15 of the Civil Procedure Rules 2010 and Sections 1A, 1B and 3A of the Civil Procedure Act seeking orders that :-
 1. This Court does find upon inquiry, that JNN is a person incapable of protecting his interests due to unsoundness of mind as a result of suffering from dementia and intermittent memory lapses and be declared so.
 2. BKN, the Plaintiff herein be appointed as the Defendant’s Guardian Ad Litem.
 3. The Plaintiff EEN wife and his children namely;-SNNJNNEMN
Do jointly manage all the affairs of the Defendant.
 4. Such further and/or other orders as may be made by this court as it deems fit in the circumstances of this case.
2. The grounds are on the face of the Application which are further expounded by an Affidavit Sworn by BKN on 1st February 2023. Mainly, she depones that she is the second born child and daughter of the Defendant who is aged 71 years. That her mother and all her siblings including S NN who resides in the United States of America have granted her written consent to be appointed by the Court as a Guardian Ad Litem of the Defendant.



3. Giving chronology of events, and annexing documents, she states that since the end of year 2020, the Defendant who has been battling with diabetes , high blood pressure and arthritis for a decade, fell critically sick and was on 11/12/2020 admitted at the Nairobi Hospital suffering from a sepsis attack coupled with diabetic and chronic foot wound. That currently, he is living in Nairobi for purposes of checkups and suffers from memory loss .
4. She further depones that there is a dispute between the Defendant and one AMC over his Plot No. 90 W/N measuring approximately 50x100ft , part thereof was sold to AMC while the Defendant was admitted in Nairobi Hospital which sale suffers from unconscious bargain and the said AMC has laid claim on a portion measuring 25ft x 50 ft thus necessitating the filing of Kisii CMC ELC No. 3 of 2023.
5. She also filed a further Affidavit on 22nd February 2023 and annexed further documents being a Medical Report stamped 21/2/2023 (BKN1) and consent signed by SNN (BKN2) who works and lives in United States of America. She therefore urged the Court to grant the orders sought.

Determination

6. This Court has considered this Application , the affidavits and the annexures thereto. Order 32 Rule 15 of *Civil Procedure Rules* provides that:-

“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.”

7. There is a written consent enabling the Applicant file this Application. No doubt the current Medical Report by Prof. Stanley Ominde Khainga dated 21st February 2023 in regard to the Defendant’s physical and mental health is a full reflection of and in support of the averments by the Applicant herein.
8. Upon examination of the Defendant on the same date, the Processor made the following findings in regard to mental state examination:-Appearance closed, slouched posture, hesitant gaitConfusedSpeech slow , monosyllabic answers to questionsFlat mood
9. His conclusion was that:-

“The patient suffers from chronic Diabetic foot ulcer, hypertension, right knee osteoarthritis and Major Depressive disorder. Following the above comorbidities, he has demonstrated poor judgment, memory and poor decision making.”

10. This court is therefore satisfied that by reason of his mental infirmity, the Defendant is incapable of protecting his interests in the circumstances and therefore requires a Guardian Ad Litem. The Application dated 1st February 2023 is clearly merited and allowed in the following terms:-
 1. By reason of mental infirmity, the Defendant herein JNN be and is hereby declared by this Court as a person incapable of protecting their interests.
 2. BKN be and is hereby appointed as the Defendant’s Guardian Ad Litem in accordance with the law.
 3. The Plaintiff, EEN wife and his children being SNN, JN and EMN do jointly manage all the affairs of the Defendant.



4. No orders as to costs.

DATED, SIGNED AND DELIVERED (VIRTUALLY) AT KISII THIS 25TH DAY OF JANUARY, 2024.

PATRICIA GICHOCHI

JUDGE

In the presence of;

N/A for the Ex-Parte Applicant

Laureen Njiru/Aphline Court Assistant

