



REPUBLIC OF KENYA



**In re FKL (Miscellaneous Application E008 of 2023)
[2024] KEHC 3112 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3112 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS APPLICATION E008 OF 2023
JK SERGON, J
MARCH 19, 2024
IN THE MATTER OF FKL (SUING THROUGH NEXT FRIEND)**

IN THE MATTER OF

MCL APPLICANT

RULING

1. The application coming up for this court's determination is a notice of motion dated 12 October, 2023 seeking the following orders;
 - (i) Spent
 - (ii) That MCL be made a next friend to FKL who is incapable of protecting his interest in this case.
 - (iii) Any other order that this Honourable Court may deem just and expedient to grant.
 - (iv) Costs of the application be in the cause.
2. The application is supported by grounds on the face of it and the supporting affidavit sworn by MCL the Applicant herein.
3. The Applicant avers that she is the legal wife of FKL and annexed a copy of the certificate of marriage.
4. The Applicant avers that FKL is aging and has suffered lower and upper limb paralysis since 2007 and is currently undergoing bi-monthly physiotherapy sessions and annexed a copy of the medical report.
5. The Applicant avers that there is an ongoing land dispute touching on family land and her husband is incapable of presenting his case, therefore she is seeking to file a suit as the next friend.
6. The Applicant avers that the gist of the instant application is for orders that she be appointed as next friend to FKL who is incapable of protecting his interests.
7. The Applicant herein filed a further supporting affidavit in support of her application.



8. The Applicant avers that her husband FKL aged 70 was diagnosed with quadriplegia paralysis of both arms and legs in 2007 from an unknown cause.
9. The Applicant further avers that imaging of his head showed that he has brain atrophy resulting in the loss of function and annexed a doctor's report dated 31st October, 2023.
10. The Application is not opposed.
11. The application is brought under Order 32 Rule 15 of the *Civil Procedure Rules*, 2010 which provides as follows;

“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.”
12. The instant case properly falls under the circumstances envisaged in the provisions of Order 32 Rule 15 of the *Civil Procedure Rules*, 2010. I have considered the application and the sole issue for this court's determination is whether FKL is incapable of protecting his interests on account of old age and infirmity. The answer is in the affirmative.
13. In the case of *Eric Nagwagameja v Solomon Meja Irangi & another* [2019] eKLR in a similar case whereby the court was called upon to establish whether the 1st respondent therein by reason of old age and ill health was incapable of protecting his interests. Githinji J. held as follows;

“In the premises the evidence of a medical expert is required as a basis for having a judicial inquiry. I direct that the 1st respondent be subjected to a proper medical assessment by a medical doctor and the report be filed in court before subjecting him to a judicial inquiry. To ensure the same is complied with, the judicial inquiry should be conditional to a medical examination being conducted and the report filed in court.”
14. In *MMM v AMK* (Miscellaneous Civil Application 51 of 2015) [2016] KEHC 4741 (KLR) 13th June 2016 the court set out a two fold procedure for the judicial inquiry to wit examination of the said person and medical evidence.
15. In applying the above precedents to the facts of the present case, I find that this Court has ascertained that the said FKL is incapable of protecting his interests. This court has considered the medical evidence on record and conducted a judicial inquiry, whereby the Deputy Registrar, High Court visited the subject at his home address in Chemoiben, Litein within Kericho County. Based on the medical evidence filed in court to wit letter dated 31st October, 2023 and 11th October, 2023 by Dr. Kakili and Clinician Dickson Langat respectively both Kapkatet Sub-County Hospital, the physical observations of the subject during the site visit and interviews by the subject's 2nd wife, children and the Area Chief, the Honourable Deputy Registrar formed the opinion that the subject herein, FKL suffers from infirmity of mind; brain atrophy which prevents him from safeguarding his interests. The Honourable Deputy Registrar noted that there was a dispute as to the appointment of the applicant solely as the next of friend, the subject's second wife and children wished to be enjoined in the instant proceedings.
16. Accordingly, the notice of motion dated 12th October, 2023 is hereby allowed with the following consequential orders;
 - (i) MCL (1st wife) and JL (2nd wife) be and are hereby made next friend to FKL who is incapable of protecting his interests.



(ii) No orders as to costs as the application is not opposed

DATED, SIGNED AND DELIVERED AT KERICHO THIS 19TH DAY OF MARCH, 2024.

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J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Rutoh

No Appearance for the Parties

