

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 553 OF 2019**

**IN THE MATTER OF THE PERSONS WITH DISABILITIES ACT, 2010  
AND IN THE MATTER OF THE CIVIL PROCEDURE CODE, CAP. 33  
R.E. 2002 AND IN THE MATTER OF THE JUDICATURE AND  
APPLICATION OF LAWS (PRACTICE AND PROCEDURE OF  
CASES INVOLVING VULNERABLE GROUPS) RULES, G.N. NO.  
110 OF 2019 AND IN THE MATTER OF A PERSON OFF UNSOUND  
MIND KIZITO JOHN MSUNGU AND IN THE MATTER OF AN  
APPLICATION FOR AN ADOPTION ORDER BETWEEN KIZITO  
JOHN MSUNGU (MATAYO K. KIHWELO).....APPLICANT**

**VERSUS**

**GABRIELE BRANDOLIN .....RESPONDENT**

**RULING**

**EBRAHIM, J.**

The Applicant is seeking for an order of this Court to appoint one Matayo K. Kihwelo as a next friend of Kizito John Msungu, a person of unsound mind.

The application was brought by way of Chamber Summons pursuant to **Order XXXI rule 1, 4(1) 5(1) and 15, Order XXXIV Rule 1 (1) and (2), 3(1) and (2) 4 and 5, Order XV Rule 1, and Section 65, 92 and 95 of the Civil Procedure Code, [Cap. 33 R.E. 2002]. Section 4(a), 15 (1) and (3) and 16 (1) of the Persons with Disabilities Act, 2010, Rules 4 and 5 of the Judicature and Application of laws** (Practice and Procedure of Cases involving Vulnerable Groups (Rules), GN No. 110 of 2019. The application supported by an affidavit sworn by Mr. Gidions Kaino Mandesi learned counsel for the applicant.

According to the affidavit by the learned counsel for the applicant, the respondent started to live with Kizito John Msungu since 1994 to date. Due to his unsoundness of mind, the respondent wants to adopt him for proper care maintenance and protection.

At the hearing both parties were represented. Mr. Gideon Kaino Mandesi learned advocate represented the applicant, while Ms. Christina Iyumba, represented the respondent.

Mr. Mandesi, moved the court to apply **Order XXXI rule 15 of the Civil Procedure Code [Cap. 33 R.E. 2002]**, which allows a next friend to sue or to be sued on behalf of a person of unsound mind. The application was conceded by the respondent.

Having heard the submission of the parties and considering the fact that, a person of unsound mind or under disability, who is unable to maintain a suit on his or her own behalf, according to the requirement of the law, needs a next of friend to act for or on his/her behalf, I find this application to be meritorious.

Therefore, by virtues of Order XXXI rule 1, 4 and 15 of the Civil Procedure Code, [Cap. 33 R.E. 2002]; I hereby appoint Matayo K. Kihwelo as a next friend of Kizito John Msungu.

Application allowed.

A handwritten signature in black ink, appearing to read 'R. A. Ebrahim', with a large, stylized initial 'R'.

**R. A. Ebrahim**

**JUDGE**

**13/03/2020**