

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 429 OF 2022

IN THE MATTER OF PERSONS WITH DISABILITIES ACT, 2010

AND

IN THE MATTER OF A PERSON OF UNSOUND MIND YUSUF KASSIM YUSUF

AND

**IN THE MATTER OF APPLICATION FOR APPOINTMENT
OF NEXT FRIEND BY MAULID MOHAMED MAFANYA APPLICANT**

(Made under Order XXXI Rule 1, 3(2), 3(3), 4(1), 5(1) of the Civil Procedure Code [Cap. 33 R.E 2019] and section 15(1) of the Persons with Disabilities Act, 2010

RULING

Date of last Order 06th Dec, 2022

Date of Ruling 20th January, 2023

E. E. KAKOLAKI J

This is uncontested application by the applicant **Maulid Mohamed Mafanya** who is an uncle and care taker to **Yusuf Kassim Yusuf**, a person of unsound mind, petitioning for orders of appointment as his next friend to protect his rights on the ground that, the later has been suffering from abrupt behavioural changes hence loss of ability to make rational decision,

control his own behaviour and recognise the meaning of his actions. The application which has been preferred under the provisions of Order XXXI Rule 1, 3(2), 3(3), 4(1), 5(1) of the Civil Procedure Code [Cap. 33 R.E 2019] and section 15(1) of the Persons with Disabilities Act, 2010 accompanied with applicant's affidavit. The applicant is represented by Ms. Miriam Ismail Majamba, learned advocate and the hearing of the matter proceeded by way of written submission.

Submitting in support of the application Ms. Majamba informed the Court that **Yusuf Kassim Yusuf** who is of unsound mind started suffering from mental disease on August 2013 was taken to Muhimbili National Hospital and diagnosed to have psychiatric mental disability and therefore adjudged to be unable to manage his own affairs and estate/property including Plot No. 9, in Block 14, located at Kariakoo area within Ilala Municipality, Dar es salaam Region which he possesses interest therein and jointly occupied with his kindred after passing away of his late father **Kassim Yusuf Seif** and his grandfather one **Hamis Kassim Yusuf**. That owing to that body infirmity touching the state of his mind and the fact that he is on constant medical treatment in 2014, the said **Yusuf Kassim Yusuf** was involved in a contract for disposition of the above mentioned plot/property to one Mohamed Eidha

Awadhi, the contract which was challenged in this Court vide Land Case No. 105 of 2018, the case that ended up with settlement deed involving the said **Yusuf Kassim Yusuf** while under that state of mind. As his interest need to be protected Ms. Majambe urged this Court to grant the application so as to allow the applicant to sue on behalf of the said **Yusuf Kassim Yusuf**, a person of unsound mind.

I have taken into consideration the submission by the learned counsel as well as the averments in the affidavit by the applicant in support of the application. I have also satisfied myself that this Court has the requisite powers to grant the sought orders upon sufficient reasons disclosed. It is not in dispute as also shown in medical report attached to the applicant's affidavit that, **Yusuf Kassim Yusuf** is suffering from mental disease called Schizophrenia that has subjected him to close medical attention as his mental status has proven to be unfit. Further to that, the court is satisfied that he needs to be under care and assistance of close relative as provided under section 15(1) of the Persons with Disabilities Act, 2010 for being unable to manage his affairs.

In light of the above evidence and findings as well as the submissions by the learned counsel for the applicant, and given the fact that the applicant is the

uncle to the said **Yusuf Kassim Yusuf** who is currently taking care of him, it is the considered view of this court that the applicant has qualified to be appointed as his next friend and care taker. Further to that she is also a fit person to be empowered to pursue the rights/interests of **Yusuf Kassim Yusuf** in respect of the title in Plot No. 9 Block 14, located at Kariakoo area within Ilala Municipality, Dar es salaam Region so as to make sure that the same are used to support him and his family if any.

In view of the above I find the application has merit and proceed to grant the prayers as prayed by the petitioner. The petitioner is hereby appointed as next friend and care taker to one **Yusuf Kassim Yusuf**. He shall at all-time when holding such title conduct himself in accordance with the law and favour the best interest of **Yusuf Kassim Yusuf**.

No orders as to costs.

It is so ordered.

Dated at Dar es Salaam this 20th day of January, 2023.



E. E. KAKOLAKI

JUDGE

20/09/2023.

The Ruling has been delivered at Dar es Salaam today 20th day of January, 2023 in the presence of Ms. Miriam Ismail Majamba, advocate for the applicant and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI
JUDGE
20/01/2023.

