

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM SUB-REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 3755 OF 2024**

**IN THE MATTER OF PERSONS WITH DISABILITY ACT, 2010**

**AND**

**IN THE MATTER OF PERSON OF UNSOUND MIND CLARA EDSON KACHEWA**

**AND**

**IN THE MATTER OF APPLICATION FOR APPOINTMENT OF NEXT FRIEND**

**BY**

**LUKRESIA SILVESTER KACHEWA.....APPLICANT**

**RULING**

*09<sup>th</sup> & 17<sup>th</sup> May, 2024*

**BWEGOGGE, J.**

This is an ex parte application commenced by the applicant herein above named praying to be appointed as the next friend of Clara Edson Kachewa. The application herein is brought under the provisions of Order XXXI, rule 4 (1), rule 5 (1) and rule 15 and section 95 of the Civil Procedure Code [Cap. 33 R.E. 2019] and section 15(1), 16 (1) of the Persons with Disabilities Act, 2010, rule 5 of Judicature and Application of Laws (Practice and Procedure of Cases Involving Vulnerable Group) Rules,

2019 G.N. No. 110 of 2019. The same is supported by the affidavit of the applicant.

On the date scheduled for hearing, the applicant was represented by Mr. Issa Chundo, learned advocate. The application was heard orally.

In substantiating this application herein, Mr Chonda submitted that the applicant herein prays to be appointed as the next friend of Clara Edson Kachewa. That this application is prompted by accident occurred on 11/11/2018 whereas the victim was injured by the electric shock caused by faulty electric wires which fell on the residence of the applicant. The counsel enlightened this court that, the victim having sustained injuries, she was attended at Tabata Hospital and later transferred at Amana Referral Hospital. Thereafter, she was referred to Muhimbili Hospital where she is undergoing treatment.

Further, the counsel submitted that, currently, the victim is suffering loss of memory. Thus, the victim cannot proceed with her secondary school studies. This court was referred to the medical reports to that effect from the Amana and Muhimbili Hospitals annexed to the pleadings filed hereto.

In tandem to above, the counsel submitted that, as the victim is incapacitated, the same cannot pursue her claims and the intended legal

action in pursuit of her right. Hence, the application herein for appointment of the applicant herein as the next friend.

The counsel concluded his submission by asserting that the provision of Order XXXI, rules 1 and 15 of the CPC instructs that the minor or person of unsound mind may sue through the next friend.

On the account of the foregoing, the counsel prayed this court to allow the application herein and appoint the applicant (Lukresia Silvester Kachewa) herein who is the mother of the victim (Clara Edson Kachewa) as her next friend.

The provision of Order XXXI, rule 4(1) of the CPC instructs that any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit, provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant. Likewise, rule 5(1) of Order XXXI of the Code provides that every application to the court on behalf of a minor shall be made by his next friend or by his guardian for the suit.

In the same vein, the provision of order XXXI, rule 15 of the same Code dictates 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 person who though not so adjudged are found by the court on inquiry, by reason or unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

The affidavit supporting this application herein bears depositions that the applicant herein is the biological mother of the victim (Clara Edson Kachewa) whom she seeks to be appointed next friend. The applicant resided with the victim at Tabata Mtambani herein Dar es Salaam. On 24<sup>th</sup> April, 2017 the faulty electric wire connected to the residence of their neighbour, fell on the applicant's residential house. Despite numerous reports made by the applicant to the office of the Tanzania Electric Supply Company Limited (TANESCO) at Tabata, the faulty electric wires posing danger to the applicant's family were not removed. Consequently, on 11<sup>th</sup> November, 2018 the victim herein was struck by electric shock which culminated to bodily injuries including brain damage.

Further, it is deposed that the request for financial help from TANESCO to meet increasing medical expenses were not heeded. Likewise, the belated financial assistance made by TANESCO doesn't meet the actual need. And, the demand notice for payment of statutory compensation issued by the Freshfield Advocates remain unheeded as well. As the victim has lost consciousness due to brain damage caused by the electric

shock suffered, the same cannot take initiative to claim compensation in court; thus, the applicant (parent of the victim) whom the victim solely depends on for her survival, is constrained to institute the claim in court for the interest of the victim through the legal assistance rendered to her. Hence, the application herein.

Having scrutinized the documents attached to the pleadings filed herein, I found that the same speak volumes of the deponed facts revisited above. Briefly, the PF3 attached to the pleading herein indicates that the applicant reported the incident at Tabata Police Station on 11/11/2018 and issued with medical examination report (PF3) for attending medical care at Tabata Government Hospital. The report on the PF.3 executed at Tabata Government Hospital entails that the victim suffered electric shock which occasioned open wounds on both upper limbs, among others. Likewise, the report executed at Amana Referral Hospital dated 12/06/2019 entails that the victim was observed with developing permanent incapacity due to brain damage such as convulsion (seizures) loss of memory and unstable movement. In the same vein, the medical report issued by Muhimbili National Hospital dated 17<sup>th</sup> November, 2020 indicate that the victim herein has developed seizure in the form of

episode of loss of consciousness. Generally, the rated impairment of the victim correlates to 14% of the whole person.

The foregoing factual matrix gathered from the depositions made by the applicant and annexed documents, coupled with the dictates of the law in terms of the provisions of Order XXXI, rule 4 (1), rule 5 (1) and rule 15 of the Civil Procedure Code [Cap. 33 R.E. 2019] afore revisited, among others, renders the case herein fit for grant of the order sought herein.

Given the foregoing, I find the application herein meritorious. I hereby grant the application as prayed. The applicant herein one **LUKRESIA SILVESTER KACHEWA** is hereby appointed as next friend of the debilitated victim namely, **CLARA EDSON KACHEWA**.

So ordered.

**DATED at DAR ES SALAAM** this 17<sup>th</sup> May, 2024.



O.F. BWEGOG  
JUDGE