



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

COMMERCIAL AND ADMIRALTY DIVISION

MISC CIVIL APPLICATION NO. 430 OF 2019(OS)

IN THE MATTER OF

SULEMANI KAHINDI NGOMBO (INJURED PERSON)

AND

IN THE MATTER OF

THE CIVIL PROCEDURE ACT AND THE CIVIL PROCEDURE RULES, 2010

BETWEEN

MARIA BENDERAKALAMA.....APPLICANT

AND

MWANAHAMISI ALI.....RESPONDENT

RULING

[1] The Originating Summons dated **1 November 2019** was filed on behalf of the applicant herein on **11 November 2019** by the firm of **Ameli Inyangu & Partners** pursuant to **Articles 48 and 159 of the Constitution of Kenya, 2010, Sections 1A, 1B and 3A of the Civil Procedure Act, Chapter 21 of the Laws of Kenya; Order 32 Rule 15 and Order 50 Rule 1 of the Civil Procedure Rules.** It seeks the determination of the following questions:

- [a]** Whether **Sulemani Kahindi Ngombo** is incapable of protecting his interests with regard to his affairs by reason of his paraplegic state;
- [b]** Whether the applicant herein, **Maria Benderakalama**, should be appointed as the next friend or guardian ad litem of **Sulemani Kahindi Ngombo**, the injured person herein, in order to pursue compensation arising out of a road traffic accident which occurred on **1 February 2019**; and,
- [c]** Who should bear the costs of the application?

[2] The application was premised on the grounds that **Sulemani Kahindi Ngombo** was involved in a road traffic accident on **1 February 2019** in which he suffered life-threatening injuries. He was treated at Coast General Hospital and elsewhere; and, although he recovered from the injuries suffered in the accident, he was left with permanent disability; which includes loss of memory, cognitive function and speech. It is the averment of the applicant that **Sulemani Kahindi Ngombo**, who is her husband, is therefore unable to manage his affairs; hence the need to have her appointed as his guardian ad litem.

[3] In the Supporting Affidavit annexed to the application, the applicant averred that she is mentally fit and agreeable to being appointed as her husband's guardian ad litem. She annexed a copy of the Medical Report prepared by **Dr. Darius Kiema** as well as the treatment notes from Coast General Hospital, among other documents, to support and verify her assertions.

[4] The application proceeded *ex parte*, granted the nature of the orders sought; and having perused and considered the averments set out in

the Supporting Affidavit as well as the documents annexed thereto, it is manifest that, indeed **Sulemani Kahindi Ngombo** was involved in a road traffic accident on **1 February 2019** in which he sustained severe head injuries. The Police Abstract and the documents issued by **Coast General Hospital** and **Jocham Hospital** confirm these injuries for which he was admitted in ICU and surgical wards between **2 February 2019** to **12 April 2019**.

[5] **Dr. Kiema's** report shows that, as at **25 September 2019**, when he examined **Sulemani**, he could not walk unaided and was not able to talk or control his bowel movements or bladder. He accordingly formed the opinion that he had sustained the following permanent disabilities:

- [a] Loss of memory and cognitive/speech functions;
- [b] Loss of bowel and bladder control;
- [c] Gait disturbances and inability to walk unaided;
- [d] Inability to work, undertake activities of daily living;
- [e] Risk of developing post-traumatic fits/convulsions.

[6] On the basis of the evidence placed before me, it is my finding that: [a] **Sulemani Kahindi Ngomo** is incapable of protecting his interests with regard to his affairs, given the nature of the injuries he suffered and the residual impact thereof.

[b] The applicant herein, **Maria Bendera Kalama**, who is the wife of **Sulemani**, is a suitable person for appointment as his guardian ad litem, in the circumstances; and that she meets the criteria set out in **Order 32 Rule 4** as read with **Rule 15** of the **Civil Procedure Rules**.

[7] Accordingly, in respect of the Originating Summons dated **1 November 2021**, it is ordered that the applicant, **Maria Bendera Kalama** be and is hereby appointed as the guardian ad litem for **Sulemani Kahindi Ngombo** for the purpose of filing a suit as proposed. It is further ordered that the costs of this application be costs in the intended suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 4TH DAY OF NOVEMBER, 2021.

OLGA SEWE

JUDGE