



**REPUBLIC OF KENYA  
IN THE HIGH COURT  
AT KITALE  
Succession Cause 86 of 2004**

**IN THE MATTER OF THE ESTATE OF WANYONYI MWASAME NAMUNYU....DECEASED  
VERSUS  
TERESIA KHISA WANYONYI.....APPLICANT**

**RULING**

By a Notice of Motion (undated) but filed on 16<sup>th</sup> October 2009, pursuant to the provisions of order XXXI Rule 15 of the Civil Procedure Rules, sections 3 and 3A of the Civil Procedure Act, the applicant seeks orders:

1. That this application be certified urgent and heard ex-parte in the first instance.
2. That Florence Auma, be made a next friend to Teresia Khisa Wanyonyi, who is incapable of protecting her interest in this case.
3. That any other order that this court may deem just and expedient to grant.
4. That the costs of this application be provided for.

The application is based on the grounds.

- (a) The applicant has suffered mental infirmity and is incapable of presenting her case.
- (b) In the interest of justice application should be allowed.
- (c) No prejudice shall be occasioned if the order is granted.
- (d) To enable the court finalise this case the order should be granted.

The application is predicated upon the annexed affidavit of Florence Auma, sworn on the 16<sup>th</sup> day of October 2009.

On behalf of the applicant, it was argued that **Teresia Khisa Wanyonyi**, is her biological mother aged 65 years.

That the mental status of the applicant has since deteriorated – psychiatric problem. In support of that medical condition is a medical report exhibited as “FA1”. By reason of the foregoing she is not in a position to conduct her personal affairs hence the need to appoint a next friend to conduct the law suit filed herein.

The respondent neither filed grounds of opposition nor replying affidavit.

Order XXXI Rule 15 provides thus:

**“ The provisions contained in rules 1 to 14, so far  
as they are applicable, shall extend to persons  
adjudged to be of sound mind, and to persons  
who though not so adjudged are found by the  
court on enquiry, by reason of unsoundness**

**of mind or mental infirmity, to be incapable**

**of protecting their interests when suing or**

**being sued”.**

It is axiomatic that an order for appointment of a guardian **ad litem** may be obtained upon application in the name and on behalf of a person of unsound mind in like manner as a minor.

Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of a person of unsound mind or minor; and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian **ad litem** a plaintiff.

Before the name of any person shall be used in any action as next friend of a person of unsound mind or minor such a person shall sign a written authority for that purpose and the authority shall be filed.

I have scanned through the application and find as a fact that no written authority for that purpose has been signed and filed with the application.

For the foregoing reasons the application fails and is struck out. The applicant is granted leave to file a fresh proper application.

Dated and delivered at Kitale this 12<sup>th</sup> day of November, 2009.

**NRO OMBIJA  
JUDGE**

Florence Auma in person.

Mr. Njoroge for Respondent.