

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL CASE NO. 376 OF 1999

**EUNICE KIRUNDA KINYUA (Suing as the Administratrix
of the estate of JOSEPH KINYUA KARANI (Deceased)PLAINTIFF
VERSUS
DANIEL KIBIRI MUTURIDEFENDANT**

RULING

This is an application under Order IXA Rules 9 and 10, Order 1 Rule 10 and Order XXX1 Rule 15 of the Civil Procedure Rules (hereinafter referred to as “the Rules”). In it, Josephat Mwachu Kibiri who was designated as the “Intended Next Friend” seeks in pertinent part the following orders:

“I. That the Applicant be made a next friend of the Defendant in this case;

II. That this Honourable Court be pleased to set aside or vacate the Interlocutory Judgment entered on June 19, 2000 and any subsequent orders thereto.”

The application was supported by an affidavit sworn by Mr. Joseph Mwachu Kibiri on September 25, 2001.

Looking at the material placed before me and considering the Submissions of Counsel for the parties, it is apparent that the primary question raised for determination is whether Mr. Kibiri is entitled to be made a next friend of the Defendant in this case.

Order XXX1 Rule 15 of the Rules provides that the provisions of Rules 1 to 14 shall extend to persons adjudged to be of unsound mind, and to persons who though not so adjudged are found by the court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued. Under Order XXX1 Rule 1, a next friend is only available in cases where the person with legal incapacity is the Plaintiff. It does not relate to the Defendant as in this case. Where the Defendant has legal incapacity, Order XXX1 Rule 3 of the Rules provides for the appointment of a Guardian ad litem. On this conclusion alone, the application of Mr. Kibiri must fail. It follows that, in that event, he has no locus standi to agitate any other matter in the suit.

In the result, I strike out the application of Mr. Kibiri with costs to the Plaintiff which costs shall be borne by the said Mr. Kibiri.

Dated and Delivered at Nakuru this 28th day of May, 2003.

ALNASHIR VISRAM

JUDGE