

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

HBC NO. 104 OF 2011

BETWEEN : **SHYAM KAUR**

PLAINTIFF

AND : **VISHWA NAND**

DEFENDANT

Counsels : Ms. Arthi Bandannaswamy on the instructions of
Messrs Patel & Sharma Lawyers for the Plaintiff

: Ms. Lal Patel on the instructions of Messrs Lal Patel Bale
Lawyers for the Defendant

Ruling made on : 31st July 2017.

Ruling by : Justice Mr. Mohamed Mackie

R U L I N G

(On the Appointment of “Manager, Next Friend & Guardian *Ad Litem*”)

[1] This Ruling is made in respect of an Application made by the Plaintiff’s Solicitors by way of Notice of Motion dated 06th October 2016, filed on 12th October 2016, moving for the following orders;

- (a) An Order that there be an inquiry into the mental state of the Plaintiff to determine whether she is of unsound mind and if found to be such, the

Plaintiff be declared of Unsound Mind and a patient incapable of managing and administering her property and affairs.

- (b) An Order appointing RAM CHAND of Korovuto, Nadi, Fiji, as the Plaintiff's Next Friend and Guardian Ad Litem for the purpose of conducting the cause herein.
- (c) Cost of this application be cost in the cause.
- (d) Any further or other Orders as this Honourable Court may deem fit in the circumstances.

- [2] The above Application was, admittedly, made pursuant to part Vi of the **Mental Treatment Act- Chapter 113**, which in fact had stood repealed at the time of the Application, and **Order 80 Rule 2 (1), 3(4) and Order 20 Rule 5** of the **High Court Rules 1988** and under the inherent jurisdiction.
- [3] As the then learned Counsel for the defendant objected for holding of such an inquiry, this Court after listening to the learned Counsels for both the parties at the hearing held before me on 04th May 2017 as to whether there should be an inquiry into the Mental state of the Plaintiff as prayed for in paragraph (a) above and considering the contents of the written submissions filed on behalf of the parties, made ruling on **16th May 2017** and decided, among others, to have an inquiry as prayed for above and to obtain a Medical Certificate of the Plaintiff after subjecting her to a proper and comprehensive Medical examination.
- [4] In compliance with the above ruling, the Plaintiff's Solicitors, having got the Plaintiff produced for a Medical Examination before **Dr. Jay D. Lincoln, at ST. GILES HOSPITAL** in Suva, have filed a **Mental State Examination Report** dated 26th June 2017 along with a supplementary affidavit dated 14th July 2017, with copies thereof to the Solicitors for the defendant.
- [5] Subsequently, when the matter came up before me today(**31st July 2017**) to fix a date for the inquiry, to determine the alleged mental state of the Plaintiff and to consider the appointment of Plaintiff's Son RAM CHAND as the Next Friend & Guardian *Ad Litem* and granting of the other ancillary reliefs prayed for, the learned Counsel who appeared for the defendant, having consented for the granting of the

rest of the Orders as prayed for in the said Notice of Motion dated 6th October 2016, moved to fix the main matter for hearing to consider the substantial reliefs prayed for in the statement of claim dated **6th July 2011**.

- [6] In other words, the learned Counsel for the defendant, who appeared on the instructions of the newly appointed solicitors for the defendant, agreed for the appointment of the Plaintiff's Son, namely, RAM CHAND as the **Guardian Ad Litem & Next friend** of the Plaintiff, without contesting the alleged mental state of the plaintiff averred in the pleadings and in the lastly obtained **Mental State Examination Report** and particularly, considering the elderly age of the plaintiff and that of the main matter in hand, for which this is grateful to the learned Counsel for the defendant.
- [7] However, before proceeding to grant the above interlocutory reliefs, on careful perusal of the relevant law that governs the persons who are Mentally ill or alleged to be so, this court has observed that due to an inadvertence that had occurred on the part the learned Counsel for the plaintiff, about which the learned then Counsel for the defendant too had not taken serious notice and instead had chosen not to object, to the fact that this Application in hand, for the inquiry in to the alleged mental state of the plaintiff, had been made under the **Mental Treatment Act - Chapter 113**, while it had been completely repealed by **Mental Health Act of 2010**. (Initially known as decree) by the time the Application was made.
- [8] As a result, this Court too relied on the learned Counsels for the plaintiff and made the ruling dated 16th May 2017 following the said repealed **Mental Treatment Act** and not under the relevant provisions of the new Act, namely, the **Mental Health Act 2010**, for which this Court drew the attention of counsel for the plaintiff and the then Counsel for the Defendant when the matter was mentioned before me on 26.05.2017, who accordingly, conceded the occurrence of inadvertence on their part.
- [9] However, I now observe that the ruling made on 16th May 2017 by this Court correctly falls in line with the relevant provisions of the **Mental Health Act 2010** as well, as far as the holding of an inquiry in to the alleged mental state of the plaintiff is concerned, and no substantial error has occurred or prejudice has been caused to any parties in this Application through the said erroneous mention of the repealed Act.

[10] Accordingly, I, acting under Order **20 Rule 10** of the High Court Rules 1988, which authorises the Court to amend the Clerical mistakes in judgments or orders, or errors arising therein from any accidental slips or omissions, decide that wherever the name of the relevant Act is referred to as the **Mental Treatment Act**, in the previous ruling dated 16th May 2017, the name of the new Act ie. "**Mental Health Act 2010**" has to be substituted and same is hereby amended by substituting the name of the said new Act.

[11] Sections 108 and 109 in part 10 of the Mental Health Act 2010 make provisions for holding of inquiry to ascertain the mental state of a person, claimed to be of unsound mind and to appoint Manager to manage and administer the estate of such person, if he is found to be so. Such person is considered as a "person under Disability" in terms of Order 80 Rule 1 of the High Court Rules of 1988.

[12] Further, Order 80 Rule 3 sub rule (4) makes provision as follows.

"Where, after any proceedings have been begun, a party to the proceedings becomes a patient, an application must be made to the Court for the appointment of a person to be next friend or guardian ad litem, as the case may be, of that party."

[13] Admittedly, it is after the proceedings were begun in the year 2011 and during the pendency of the main Application filed by the plaintiff, the present Application in hand has been made on 6th October 2016 moving for her son to be appointed as **Next Friend & Guardian ad litem** in order to continue with the main Application on the ground that the plaintiff has become a "patient" in terms the Order 80 Rule 1 of the High Court Rule.

[14] As stated above, Considering the elderly age of the plaintiff, the time consumed on account of the main Application and, seemingly, considering various other factors fossilized in the case record too, the newly retained learned Counsel for the defendant expressed her consent today in open Court and agreed to appoint plaintiff's Son RAM CHAND as the Next Friend & Guardian *ad Litem* to represent the plaintiff in this Application pending before this Court since the year 2011.

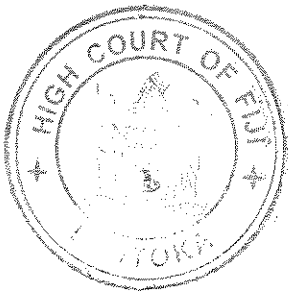
- [15] Accordingly, having considered the relevant pleadings, contents of the Medical Reports of the Plaintiff, the expressed consent of the learned Counsel for the defendant, this court being satisfied that the plaintiff is a “patient” within the meaning of the Order 80 Rule 1 of the High Court Rules, decide that the plaintiff should be represented by a Next friend and a Guardian *ad Litem* in the main Application pending before this Court.
- [16] Further, since the Plaintiff meets the criteria for a management order under Sections 108 (1) [a], [b] & [c] of the **Mental Health Act 2010** to have a Manager appointed under Section 108 (5) thereof, I decide that the Plaintiff should have the right to have her Son RAM CHAND appointed as the Manager of the Plaintiff to manage her affairs and that of her estate. Accordingly, her Son RAM CHAND is hereby appointed as the Manager of the Plaintiff in terms of the relevant provisions in part 10 of the Mental Health Act 2010.
- [17] Since the learned Counsel for the defendant has not challenged the suitability of Plaintiff’s Son for the appointment as the Next Friend & Guardian *Ad Litem* to represent the Plaintiff in the main proceedings before this Court and the Court being satisfied that he has no any conflicting interest, hereby appoint the said RAM CHAND (the Manager appointed as above) as the Next Friend and the Guardian *Ad Litem* of the Plaintiff to continue with the main application of the Plaintiff.
- [18] His appointment and functions as the Manager shall be subject to conditions stipulated in the relevant Sections of the said Mental Health Act 2010 and he shall also function and remain as the Next Friend and the Guardian *Ad Litem* of the Plaintiff until the final disposal of this Application. He shall also remain and function as the Manager of the plaintiff during the rest of her life time.

Final Orders

- a) Plaintiff is declared as a “patient “within the meaning of Order 80 Rule 1 of the High Court Rules 1988.
- b) Plaintiff’s Son RAM CHAND is appointed as the “Manager” of the plaintiff in terms of Sections 108 of the Mental Health Act of 2010.

- c) Plaintiff's Son RAM CHAND is also appointed as the **Next Friend** and the **Guardian Ad Litem** of the Plaintiff to represent the Plaintiff and to continue with this Application.
- d) Cost of this Application is in the cause.

[19] This ruling shall be sealed forthwith. Plaintiff's Solicitors shall submit the perfected Act of Appointment for the signature and seal of the Court.



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A.M.Mohammed Mackie

Judge

At Lautoka
31st July, 2017

Copies to be served to

1. Messrs. Patel & Sharma Lawyers- Solicitors for the Plaintiff
2. Messrs. Lal Patel Bale Lawyers- Solicitors for the Defendant.