

**IN THE HIGH COURT OF ZAMBIA  
AT THE FAMILY REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)**


**2025/HPF/504**

**IN THE MATTER OF: SECTION 9 (2) OF THE HIGH COURT ACT  
CHAPTER 27 OF THE LAWS OF ZAMBIA**

**IN THE MATTER OF: SECTION 4 (3) OF THE MENTAL HEALTH  
ACT, NO. 6 OF 2019**

**IN THE MATTER OF: BALDWIN CHIMANSA – A PATIENT**

**IN THE MATTER OF: AN APPLICATION TO APPOINTMENT OF A  
SUPPORTER**

**BALDWIN CHILUMBI CHIMANSA JUNIOR**  **APPLICANT**  
(Suing as next friend of Baldwin Chimansa  
And intended supporter of the affairs of  
Baldwin Chimansa)

**Before the Hon. Mrs. Justice T.S. Musonda**  
***For the Applicant : In person***

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**JUDGMENT**

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**Legislation referred to:**

- 1. The High Court Act, Chapter 27 of the Laws of Zambia**
- 2. The Mental Health Act, No. 6 of 2019 of the laws of Zambia**
- 3. The Persons with Disabilities Act, No. 6 of 2012**
- 4. The United Nations Convention on the Rights of Persons with Disabilities**

## 1. INTRODUCTION

- 1.1 By an originating summons dated 2<sup>nd</sup> July 2025, the Applicant, **Baldwin Chilumbi Chimasa Junior**, sought an order appointing him as Supporter of the rights and affairs of **Baldwin Chimasa**.
- 1.2 The application was supported by an affidavit and skeleton arguments filed on 2<sup>nd</sup> July 2025, as well as a further affidavit dated 19<sup>th</sup> August 2025
- 1.3 When the matter came up for hearing, the Applicant relied on the affidavits filed in support of his case. He called one witness, **Mestina Chapu**, to testify in support of that case.

## 2. SUMMARY OF THE EVIDENCE

- 2.1 The Applicant's case, as set out in the affidavit and further affidavit filed in support of the application, was as follows:
- 2.2 He is the son of Mr. Chimasa.
- 2.3 Mr. Chimasa has been unwell for some time, having suffered a stroke due to complications arising from high blood pressure and diabetes. As a result, the right side of his body is paralyzed, and he is incapable of managing his affairs. This is confirmed by exhibit "**BCCJ1**" in the further affidavit, a medical report issued by Chainama Hills College Hospital.
- 2.4 The Applicant contends that it is critical for another person to manage his father's affairs, particularly his bank account, to access funds required for medical expenses and basic needs.
- 2.5 Mestina Chapu testified that she is the wife of Mr. Chimasa.
- 2.6 She confirmed the Applicant's account that her husband suffered a stroke. She added that he is unable to walk and remains seated throughout the day. This condition has persisted since 22<sup>nd</sup> November 2024.
- 2.7 She stated that her husband no longer reasons properly. For instance, when handed a phone, he blows on it instead of speaking. When given food, he quickly forgets that he has eaten and asks for more. She further observed that he becomes highly agitated and may attempt to slap those near him. If offered food he dislikes, he throws away the plate. He is unable to write, and his speech is largely limited to greetings. He communicates primarily through sign language.

### 3. ISSUES FOR DETERMINATION

3.1 I have considered the evidence and skeleton arguments. Upon consideration, the only issue that requires determination is whether, in the circumstances presented, the application sought should be granted.

### 4. THE LAW, ANALYSIS AND DETERMINATION

4.1 This application is anchored on **Section 9 (2)** of the High Court Act and Mental Health Act. No. 6 of 2019, which together provide the legal framework for its consideration.

4.2 **Section 9 (2)** of the High Court Act provides that:

9.

**(2) The jurisdiction vested in the Court shall include the judicial hearing and determination of matters in difference, the administration or control of property or persons, and the power to appoint or control guardians of infants and their estates, and also keepers of the persons and estates of idiots, lunatics and such as, being of unsound mind, are unable to govern themselves and their estates.**

4.3 The above provision grants the Court the authority to appoint guardians for infants and their estates, as well as custodians for individuals and their estates in cases of persons classified as "idiots" or "lunatics".

4.4 **Section 9(2)** of the High Court Act requires amendment to ensure consistency with Zambia's legislative and international obligations.

4.5 The Mental Health Act eliminates the use of derogatory terms such as "idiot" and "lunatic".

4.6 Furthermore, the **Persons with Disabilities Act, No. 6 of 2012** was enacted to align with the **United Nations Convention on the Rights of Persons with Disabilities (UNCPRD)** and its optional protocol, and other international instruments to which Zambia is a party. This Act, along with other international instruments on persons with disabilities, underscores Zambia's obligation to eliminate derogatory terms in all legislation.

- 4.7 Turning now to the Mental Health Act, **Section 2** defines a mental patient as:

**A person diagnosed by a mental health practitioner as having a mental illness, mental disorder, mental impairment, or mental disability.**

- 4.8 Pursuant to **Section 4(1)** of the Act, a mental patient is presumed to possess legal capacity. However, **Section 4(2)** stipulates the conditions under which a mental patient may lose legal capacity, specifically:

**4 ..**

**(2) Where the nature of the mental illness, mental disorder or mental disability results in the absence of mental capacity of that mental patient, the mental patient shall not enjoy legal capacity and is legally disqualified from performing a function that requires legal capacity.**

- 4.9 **Section 4(3)**, as cited in the skeleton arguments, empowers the Court to appoint a Supporter when a mental patient is deemed to lack legal capacity. For the sake of clarity, **Section 4(3)** states:

**Where a mental patient lacks legal capacity, a court may appoint a supporter.**

- 4.10 **Section 2** of the Act defines a Supporter as a person who represents the rights or interests of a mental health user or mental patient.
- 4.11 The above provisions underscore that, in cases where a mental patient loses or lacks the legal capacity to make decisions, another person may act on their behalf to ensure the protection and representation of their rights and interests.
- 4.12 The determination of whether an individual qualifies as a mental patient is guided by established diagnostic criteria and

professional standards, as prescribed under **Section 3(a)** of the Act.

- 4.13 Accordingly, considering the foregoing provisions, I have carefully reviewed exhibit "**BCCJ1**", a letter dated 18<sup>th</sup> August 2025 authored by Dr. Gaise Kweku, Acting Head of Clinical Care at Chainama Hills Hospital, concerning Mr. Chimasa. The excerpt most relevant to this case reads as follows:

**Mr. Baldwin Chimasa, male 63 was reviewed at our facility in the presence of his wife and son. History of a stroke in November 2024, he is a known hypertensive and diabetic patient. Mr. Chimasa has shown some slight improvement but currently has poor memory, cannot care for self, highly irritable and cannot perform previous activities. Mr. Chimasa was unable to explain himself and answer correctly at the bank.**

**On examination, Mr. Chimasa was observed to have poor orientation, impaired remote and recent memory and poor concentration. Mr. Chimasa could not name objects and could not follow orders, he appeared to have psychomotor retardation and poor facial expressions. He had thought blocking and spoke in syllables. His previous laboratory tests indicate the essence of diabetes and hypertension.**

**Mr. Chimasa appears to have a neurocognitive disorder following his stroke. He lacks the ability to perform executive functions and it is our professional view that a supporter will help run his personal affairs.**

- 4.8 The Applicant's affidavit evidence and the testimony of Mestina Chapu regarding Mr. Chimasa's current condition are corroborated by the medical report authored by Dr. Kweku.
- 4.9 Accordingly, I am satisfied that Mr. Chimasa falls within the definition of a mental patient under **Section 2** of the Mental Health Act.

- 4.10 Dr. Kweku's assessment confirms that Mr. Chimasa is incapable of making executive decisions, as evidenced by poor orientation, impaired memory, poor concentration, inability to name objects or follow instructions, psychomotor retardation, and neurocognitive disorder. These findings place him within the scope of **Section 4(2)** of the Act, which provides that where mental illness or disability results in the absence of mental capacity, the affected person is legally disqualified from performing functions requiring such capacity.
- 4.11 In view of the above, I find that Mr. Chimasa lacks legal capacity and requires the appointment of a Supporter to safeguard his rights and interests, pursuant to **Section 4(3)** of the Act.

## 5. CONCLUSION

5.1 In conclusion, I find merit in the Applicant's application and make the following orders:

- (i) **Baldwin Chilumbi Chimasa Junior is hereby appointed as Supporter for Baldwin Chimasa, pursuant to Section 4(3) of the Mental Health Act.**
- (ii) **This appointment shall remain in effect for as long as Baldwin Chimasa is deemed a mental patient within the meaning of the law.**
- (iii) **No order is made as to costs.**

DATED THIS 3<sup>RD</sup> DAY OF ~~SEPTEMBER~~ **SEPTEMBER 2025**



**T.S MUSONDA**  
**JUDGE**

