



REPUBLIC OF KENYA



KENYA LAW
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**In re AC wa T (Family Originating Summons E005 of 2024)
[2024] KEHC 12336 (KLR) (27 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 12336 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
FAMILY ORIGINATING SUMMONS E005 OF 2024**

G MUTAI, J

SEPTEMBER 27, 2024

IN THE MATTER OF

RNC APPLICANT

JUDGMENT

1. The applicant is Rhoda Nyevu Chibule, also known as Josephine Rhoda Nyevu. I shall hereafter refer to the applicant as “Rhoda”. Rhoda got married to Anderson Chibule on 18th March 1968. Dr Anderson Chibule, a Makerere University-trained doctor, and a well-known politician, is also called Dr Anderson Chibule wa Tsuma. I shall hereafter refer to Dr Anderson Chibule wa Tsuma as “the patient” or “the ward”. The marriage between Rhoda and the patient was blessed with five issues.
2. Rhoda seeks to be appointed as the guardian ad litem of the patient and the manager of his estate on the ground that he has dementia, a progressive deterioration of his cognitive abilities, a condition the medical professional who was consulted says is unlikely to be reversed. For this purpose, she filed the Originating Summons dated 9th June 2024.

The Originating Summons dated 9th June 2024

3. Rhoda, as the applicant, seeks the following three orders:-
 1. That the Court finds that the respondent, Anderson Chibule wa Tsuma is incapable of protecting his interests with regard to his affairs due to senile dementia, after the conduct of a judicial enquiry;
 2. That the applicant, Rhoda Chibule, be appointed as the respondent’s, Anderson Chibule wa Tsuma’s, guardian ad litem;
 3. That the applicant does manage the affairs of the respondent, Anderson Chibule wa Tsuma, including suing and being sued.



4. The basis of the said Originating Summons is that the patient has been diagnosed with senile dementia and that his condition has got progressively worse over the years. Further, the orders sought are in the best interest of the patient.
5. The Originating Summons was supported by an affidavit sworn by Rhoda on 4th June 2024, to which she annexed the medical report of Dr Charles Mwangome, a psychiatrist based in Mombasa, and their marriage certificate. The applicant deposed that she was married to the patient. She prayed that she be appointed as his guardian ad litem and a manager of his estate, as the patient could not do so himself. The contents of the supporting Affidavit are similar to those of the grounds. I will, therefore, not rehash them.

Hearing of the Originating Summons

6. In order for the Court to make an informed decision, the Originating Summons was heard in camera. Three witnesses testified. I will provide a precis of their evidence below. The hearing proceeded on the 15th and the 29th July 2024.
7. The Applicant was the first witness. She testified on oath that she resides in Rabai, in Kilifi County. She got married to the patient in 1968. They have five children. It was her evidence that the husband had dementia. He also suffers from high blood pressure, which is managed with drugs. The patient can barely walk and is forgetful. Given the circumstances, she prayed that the Court issue the orders sought so that she could take care of him.
8. The second Witness was Dr Charles Mwangome Mbango. Dr Mwangome is a medical doctor whose specialization is psychiatry. It was his evidence that he had 29 years of experience in medicine. He testified that he saw Dr Anderson Chibule wa Tsuma on 21st March 2014. His medical opinion was that the patient has cognitive impairment due to dementia. He stated that the patient, a medical doctor, could no longer practice surgery due to his condition. He further said that he was unlikely ever to recover, wouldn't be able to lead an independent life, and must depend on his family for livelihood going forward.
9. The third witness was Ms Evelyn Umazi Mwamute. Ms Mwamute is the General Manager of Planning at the Kenya Ports Authority. The applicant is her mother, while the patient is her father. She testified that her father is over 80 years old. It was her evidence that his condition had deteriorated over the preceding three years. She stated that the patient could no longer hold conversations and required a minder to take him for walks. She said that she had no objection to her mother being appointed as the guardian ad litem of his father and a manager of his estate.
10. The Court observed the patient closely on 15th July 2024. He was present during the hearing. The patient was infirm and could hardly stand. He couldn't remember the exact time he was a member of Parliament. He could, however, remember that he went to Rabai School and the Alliance High School. In my opinion, the patient has a mental illness that is affecting his cognitive ability.

Analysis

11. I have considered the pleadings, the documentary evidence, and the oral testimonies of the witnesses. In my view, the issues I need to determine are:-
 1. Does the patient suffer from mental illness? and
 2. If so, what order should be issued?



The Applicable Law

12. Appointment of a manager of the estate of a person with mental illness is made under section 27 of the [Mental Health Act](#), as amended in 2022. A manager's duty is to safeguard the property of the Patient. The appointment of a Manager must be published in the Kenya Gazette (section 27(4) of the said Act). Any person with probable cause may object to the appointment within 14 days of the publication of the notice. Section 28 (4) of the said Act provides that:-

“a manager shall perform the manager's duty under this Act responsibly, taking into account the best interests of the estate of the person suffering from mental illness.”

13. Under the [Mental Health Act](#), the application for administration may be made by a “supporter” or “representative” of the person with mental illness, in that order. Although Rhoda is not a “supporter” of the patient, as she wasn't appointed in writing, it is my finding that being his wife, he is his “representative” within the meaning of the Act and, therefore, has the locus to file the instant Originating Summons.

Analysis of the Facts and the Law

14. In re CWN (a person suffering from mental disorders) [2022]eKLR the Court stated that:-

“The Petitioners have sought to be declared as guardians and managers of the patient. To merit the above orders the petitioners must adduce evidence sufficient to satisfy the Court, firstly that the patient is a person suffering from a mental disorder under the [Mental Health Act](#) and secondly that the patient is incapable of managing her own affairs.”

15. I would add that the third test is whether the application is in the patient's best interest. People with mental illnesses have diminished capacities to manage their affairs, analogous to that of children. Therefore, the court must ensure the application was filed in the patient's interest. In addition, the orders issued by the Court must aim to achieve the said goal.

16. The evidence adduced shows that Dr Anderson Chibule wa Tsuma has dementia. He has serious memory loss, a condition that is bound to get worse. Given the finding of Dr Mwangome, a well-regarded psychiatrist, it is my view that the patient suffers from a mental illness.

17. Rhoda averred that the patient requires help in his day-to-day functions. He cannot engage in meaningful economic activity and requires the services of a minder. Having been a successful medical professional and a politician the patient has a substantial estate. The said estate may be wasted unless there is a person appointed by the court to manage it on his behalf. The appointment of the applicant as the patient's guardian ad litem and also the manager of his estate will enable her, where necessary, to commence civil action, to preserve his estate.

18. It will, therefore, be in his best interest that a manager is appointed to manage his estate. The manager/guardian ad litem will ensure that he receives the most appropriate care possible, that his estate is not wasted or lost, and that his interests are protected.

19. I noted during the hearing that the nuclear family members supported the application.

Determination

20. I am satisfied, based on the evidence adduced, that the patient suffers from senile dementia. Senile dementia is a mental illness. There is, therefore, a case for the appointment of the applicant as the



guardian ad litem of the patient, Dr Anderson Chibule wa Tsuma and the manager of his estate. In the circumstances, I order as follows:-

1. The applicant, Rhoda Nyevu Chibule, be and is hereby appointed as the guardian ad litem of the patient Dr Anderson Chibule wa Tsuma , and also the manager of her estate;
2. Rhoda Nyevu Chibule is hereby authorised to manage the patient's estate and to commence or take over civil actions and or defend the patient against civil claims, but shall not have the power to sell, charge or otherwise alienate his immovable property without the leave of the Court;
3. Pursuant to section 27(4) of the [Mental Health Act](#), the appointment of the manager/guardian ad litem shall be published in the Kenya Gazette;
4. The manager/guardian ad litem shall file the inventory and statement of account of the estate of the patient within six months from the date of her appointment; and
5. I make no orders as to costs.

21. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 27TH DAY OF SEPTEMBER 2024. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Mr. Mohamed, holding brief for Mr. Malombo, for the Applicant; and

Arthur - Court Assistant.

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