



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS APPLICATION NO. E244 OF 2021

IN THE MATTER OF THE MENTAL HEALTH ACT (CAP 248) LAWS OF KENYA

IN THE MATTER OF AN APPLICATION FOR APPOINTMENT OF GUARDIAN AND

MANAGER OVER THE AFFAIRS OF THE ESTATE OF CKM

LIK.M.....1ST APPLICANT

LK.....2ND APPLICANT

JUDGMENT

1. By an application dated 25th November,2021 filed under Certificate of Urgency and brought under **sections 26, 27 and 28 of the Mental Health Act (CAP 248) Laws of Kenya**, the Applicants herein seek to be appointed as the joint legal guardians of CKM (*hereinafter referred to as the subject*).

2. The Application is premised on the grounds that the subject developed severe mental degeneration and is currently in a vegetative state as a result of cancer which metastasized to her brain. The subject does not have any biological children and has been dependent on the Applicants since her diagnosis. Therefore, they pray that they should be appointed as legal guardians and managers of the Subject’s estate for purposes of providing for her personal needs and most importantly medical expenses and maintenance.

3. The Applicants jointly swore an affidavit on 25th November, 2021 in support of the application in which they depose that they are the sisters of the subject. That the subject fell ill in 2020 and was referred to South Africa for further tests and was accompanied by the 2nd Applicant. She was diagnosed with advanced breast cancer that had metastasized to her bone and brain. Her condition worsened and she is now unable to function independently. She needs frequent and constant medical and nursing care and cannot manage her own affairs.

4. It is for the foregoing reasons that the Applicants enrolled the subject at trinity Palliative Care Centre for specialized care. There is on record a copy of a progress report from Trinity Care Centre dated 28th October 2021 which attests that the subject is still in a vegetative state and is in need of management, monitoring and total hospital based palliative care.

5. Annexed to the application is a medical report prepared by Dr. Greg Jonsson, a specialist Psychiatrist at the Wits Donald Gordon Medical Centre. The report indicates that the subject was diagnose with stage four Breast cancer which later spread to her lungs. She has been treated with chemotherapy and radiology by Dr. Moodley and Dr. Tunner respectively. That the subject was diagnosed with brain metastases in August 2018 for which she received a whole head radiation and targeted radiation. In addition, she underwent two surgeries where the right frontal tumor and the right cerebellar tumor were removed. He also reported that the subject has a memory problem and relied on others for her basic daily activities.

6. Also on record is a medical update prepared by Dr. Musau, from Nairobi Hospital dated 13th October 2021. The update indicates that the subject is in a vegetative state is weak and cannot move independently. That she requires round the clock care.

7. After carefully considering the pleadings filed in this matter, and in view of the expert opinion of Dr.Greg Johnson, the Specialist psychiatrist and Dr. Musau, I am persuaded that CMK, the subject herein, is suffering from mental degeneration. She is therefore a person incapable of making independent decisions and conducting her own affairs as envisaged under the provisions of the **Mental Health Act**. From the supporting affidavit I am also convinced that the two Applicants are fit to be appointed as legal guardians over the subject’s affairs.

8. In view of the foregoing, I hereby allow the Application dated 25th November, 2021 and order as follows:

i. CMK, the Subject herein, be and is hereby adjudged to be a person suffering from a mental disorder as envisaged under the provisions of the **Mental Health Act, CAP 248 Laws of Kenya.**

ii. LKM and LKO (the Applicants herein) be and are hereby appointed managers and legal guardians of the Subject namely CMK in accordance with the **Mental Health Act.**

iii. The Applicants shall jointly act as managers in respect to the estate of the Subject including any such description of moveable and immovable property, money, debts and legacies. They have the power to execute or sign all deeds and instruments relating to or evidencing the title, or right to any property, or giving a right to receive any money or goods in accordance with **Section 27** of the **Mental Health Act.**

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 28TH DAY OF JANUARY, 2022

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L.A ACHODE

HIGH COURT JUDGE