



**Magraet Wambui Gatei (Miscellaneous Application E006 of 2022)
[2022] KEHC 12301 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 12301 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS APPLICATION E006 OF 2022**

MW MUIGAI, J

APRIL 28, 2022

**IN THE MATTER OF AN APPLICATION BY MARGARET WAMBUI GATEI
TO BE APPOINTED GUARDIAN ADLITEM & LEGAL MANAGER OVER THE
AFFAIRS OF THE ESTATE OF THE SAID PROF. DAVID GITHONGO GATEI**

**IN THE MATTER OF
MAGRAET WAMBUI GATEI PETITIONER**

RULING

1. The applicant, Margaret Wambui Gatei under certificate of urgency filed petition under section 26(1) and (3), 27 (1) and 32 of the *Mental Health Act* cap 248 and she sought to be appointed guardian ad litem of Prof David Githongo Gatei and legal manager of his estate.
2. The subject, Prof David Githongo Gatei of ID no 1680858 suffers from mental disorder which has incapacitated his ability to make rational judgments or decisions for his wellbeing.
3. The applicant, Margaret Wambui Gatei ID no 0997821 presented the subject's current Medical Report dated April 30, 2020 from Prof Erastus O Amayo; F A A N consultant neuro-physician where the doctor confirmed the subject suffers from Alzheimer dementia a progressive disease characterized by loss of memory, behaviour change and eventually loss of all executive functions and dependency. He stated that the subject is not able to communicate verbally. He cannot be able to make simple decision and is now totally dependent on others for his care. He is therefore not able to execute any legal transaction.
4. The applicant's letter from chief Ikinu Location Githunguri of January 11, 2022 confirmed that the subject hails from Ngemwa Sub-location within Ikinu location and has been suffering from terminal illness. The applicant deposed that she is the wife to the subject, Prof David Githongo Gatei who started developing mental problems in 2016 whereby he was admitted at the Nairobi Hospital from May 9, 2016 to June 20, 2016. He was discharged to continue care at home. The problem has persisted and remains a challenge due to the fact that there is no known cure for the medical condition.



5. The children of the deceased - Rachael Wairimu Gatei, Wanjiku Gatei, Philip Maina Gatei and Elizabeth Wanjira Gatei signed consents that the subject who is mentally challenged to have the Applicant be appointed his legal guardian and manager of his estate.
6. Prof David Githongo Gatei, the subject's current medical status makes him lack capacity to sufficiently understand information and make decisions on his affairs and cater for his well-being. The applicant deposed that the subject has bank accounts and immovable properties registered in his name and others registered in the joint names of Prof David Githongo Gatei and Margaret Wambui Gatei and that the subject will not have the capacity to oversee and manage the immovable properties.
7. That owing to the mental condition of the subject, he is unable to execute or make rational judgments or decisions concerning the said immovable properties registered in his name.

Determination

8. From the foregoing, the issue(s) that are to be determined by the court are:-
 1. Whether the Subject should be declared as suffering from mental disorder pursuant to the [Mental Health Act](#), cap 248.
 2. Whether the petitioner should be appointed as guardian to the subject as well as manager of the estate of the subject.
9. The [Mental Health Act](#) provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons. Section 26 of the Act grants the court powers to grant orders for management of the estate of subject Prof David Githongo Gatei and for his guardianship by the applicant and wife Margaret Wambui Gatei.
10. Section 28 of the same Act provides for management of the subject's estate. The subject shall require funds to facilitate and ensure provision of medical care, nutrition, hygiene and upkeep.
Under section 26(3) of the Act it provides,

“Whereupon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the Court may make such orders as it may think fit for the management of the estate of such persons, including proper provision for his maintenance...”
11. From the evidence produced by the petitioner, the medical report on record and written consents of the subject's children, it is not disputed that the subject is suffering from a mental disorder; a medical condition contemplated under section 26 of the [Mental Health Act](#).
12. Relying of the medical report court is satisfied from the current medical report from Prof Erastus O Amayo; F A A N consultant neuro-physician, of April 30, 2020 that the petitioner has made out the case in support of the petition that the subject suffers mental incapacity and requires care and attention for his well-being. Therefore, in the interest of justice, the applicant who is his wife ought to be his legal guardian to execute the documents on the subject's behalf and manage his estate for the Subject's wellbeing.



Disposition:

In light of the above, the court grants the following orders:-

- 1) Prof David Githongo Gatei (the subject) is hereby declared to be suffering from mental disorder pursuant to section 26 of the *Mental Health Act*, cap 248 Laws of Kenya.
- 2) Margaret Wambui Gatei is hereby appointed the legal guardian to Prof David Githongo Gatei.
- 3) Margaret Wambui Gatei is hereby appointed manager of the estate of Prof David Githongo Gatei under section 28 of *Mental Health Act* to manage his estate including any such description of moveable or immovable property, money, debts and legacies, power to execute, 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.
- 4) Margaret Wambui Gatei to manage the subject's immovable properties and/or settle liabilities with regard to suit properties;
- 5) Margaret Wambui Gatei to manage and utilize the subject's estate to ensure he is well taken care of, provision of necessities; fixed abode, food and clothing and medical care and caregiving.

DELIVERED DATED SIGNED IN OPEN COURT IN MACHAKOS ON 28TH APRIL, 2022.

M W MUIGAI

JUDGE

