



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISCELLANEOUS APPLICATION NO. 191 OF 2019
IN THE MATTER OF SECTION 26, 27 AND 28 OF THE MENTAL HEALTH
ACT CAP 248 LAWS OF KENYA
AND
IN THE MATTER OF LAM
(A PERSON SUFFERING FROM A MENTAL DISORDER)

AND
IN THE MATTER OF AN APPLICATION FOR ORDERS OF GUARDIANSHIP OVER
THE AFFAIRS OF THE SAID LAM

NJM.....1ST PETITIONER

AKM.....2ND PETITIONER

JUDGMENT

1. Vide a Petition dated 30th November, 2019 brought under **sections 26, 27, and 28** of the **Mental Health Act** the Petitioners seek to be appointed as the joint guardians and managers of the Subject and her affairs. The Petition is premised on the ground that LAM (hereinafter referred to as the Subject) who is aged 74 years, suffers from impaired cognitive function and dementia. That the Subject's cognitive function has steadily declined from June 2015 and at present the Subject is incapable of managing and attending to her personal and business affairs.
2. In the supporting affidavit sworn by the Petitioners jointly on 30th November, 2019, it is deposed that the Petition is in the best interest and welfare of the Subject. There is also on record a Supplementary Affidavit and a Further Affidavit sworn jointly by the Petitioners on 19th May, 2020 and 31st August, 2020 respectively.
3. The Subject was married to one JKAM until his death on 26th April, 2016. A copy of a Certificate of Death of serial number xxxx is on record in this regard. The Petitioners herein are the biological children of the Subject and her late husband JKAM as evinced in their respective birth certificates which are on record.
4. Annexed to the supporting affidavit is a copy of a medical report dated 22nd July, 2019 prepared by Mr. M. M. Qureshi, a consultant neurosurgeon at Aga Khan Hospital Nairobi. The report indicates that the Subject was presented with an impairment of memory with a tendency to misplace objects and generally having become less productive. An ophthalmologist had evaluated the Subject and noted reduced vision, with perception of light in the left eye and tunnel vision in the right.
5. The report indicates that there was also a history of a fall four (4) years earlier, where the Subject's late husband heard her scream and found her on the landing of a staircase. Clinical examination at the time revealed a patient in fair general condition. An examination of the cranial nerve showed that the nerves were intact except for the impaired optic nerve findings. She had no lateralizing motor or sensory deficit. A Magnetic Resonance Imaging (MRI) scan of the brain revealed no organic pathology but with evidence of age related cerebral atrophy. No Alzheimer plaques were noted. The expert opinion was that the clinical features were suggestive of subtle senile dementia or early Alzheimer's.
6. Mr. Qureshi stated that over the period between the Subject's initial reviews, to the date of the report, the Subject had been attending evaluation usually accompanied by her daughter and occasionally her son, both of whom had noted steady decline in her cognitive function.

That while she was able to attend to herself in terms of bathing, dressing and feeding, she does require assistance with cooking on account of her visual impairment.

7. Mr. Qureshi however noted that during the reviews, it was evident that the Subject had episodes of confusion with outbursts of anger. She also had a history of wearing her clothes awkwardly, for example, occasionally wearing her vest over her clothes. On direct questioning, the Subject was unable to recall her own date of birth, and sometimes, the number of children she has. She was also noted to be hallucinating and talking to “persons” not in the room.

8. Investigations other than the Magnetic Resonance Imaging (MRI) scans included a Venereal Disease Research Laboratory (VDRL) which was negative, and an Electrocardiogram (ECG), which revealed mild diffuse slowing of theta waves, suggestive of mild diffuse encephalopathy. The Subject’s aggressive episodes responded to a drug known as haloperidol. She was maintained on treatment regimen and was also put on the drug known as melatonin to assist her to sleep.

9. The doctor concluded that in view of the Subject’s impaired cognitive function and features of dementia, she is not considered fit to make any important and administrative or personal decisions, nor to sign any important documents. A further report dated 8th May, 2020 prepared by Mr. Qureshi indicated that the Subject’s clinical condition and state of dementia had persisted and was unlikely to improve over time.

10. Both Petitioners were present during the virtual hearing of the matter on 3rd June, 2021. A copy of a letter from the Office of the Chief, Kilimani location dated 22nd September, 2017 issued upon the death of the Subject’s husband confirmed that the Petitioners herein are the only known children of the Subject.

11. Having carefully perused the pleadings filed in this matter, and in view of the expert opinion of Mr. Qureshi, the consultant neurosurgeon, who has been attending to the Subject, I am persuaded that LAM, the Subject herein, is a person suffering from a mental disorder as envisaged under the provisions of the **Mental Health Act**. As such, she is incapable of managing herself and conducting her own affairs. Additionally, the Petitioners have demonstrated that they are fit to be appointed legal guardians over the Subject’s affairs.

12. One of the orders sought by the Petitioners was to manage the estate of JKAM (deceased) wherein the Subject was appointed as administrator. However, the issue pertaining to the management of the estate of JKA M (deceased) is an issue that ought to be raised in the succession cause in which the Subject was appointed in respect of the administration of the estate of the deceased. This court cannot preside over the succession cause through this matter. The Petitioners must move the Succession Court appropriately in the succession cause.

13. There being merit in the Petition dated 30th November, 2019, I hereby allow it with the following orders:

- a. LAM, the Subject herein, be and is hereby adjudged to be a person suffering from a mental disorder under **section 26** of the **Mental Health Act** CAP 248 Laws of Kenya.
- b. NJM and AKM be and are hereby appointed as managers and legal guardians of the Subject namely LAM.
- c. The Petitioners shall jointly act as managers and guardians in respect of the affairs of LAM and in particular do the following:
 - i. Manage the Subject’s health care;
 - ii. Have access and operate the Subject’s bank accounts;
 - iii. Execute documents on behalf of the Subject;
 - iv. Make decisions and handle the Subject’s statutory payments payable to the government.

It is so ordered.

DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 24TH DAY OF JUNE, 2021.

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L. A. ACHODE

HIGH COURT JUDGE