



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
MISCELLANEOUS APPLICATION NUMBER E041 OF 2021
AND

IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS GUARDIAN AD LITEM OF HNM

PSNM AND JNM..... APPLICANTS

R U L I N G

1. The applicants PSNM and JNM are brothers of the subject one HNM.
2. They have brought a Notice of Motion dated 4th October 2021 under **Sections 1A, 3, 3A of the Civil Procedure Act, Order 2 rule 14 and Order 32 rule 15 of the Civil Procedure Rules, and all enabling provisions of the law** seeking orders;

1. Spent

2. THAT the Honourable Court be pleased to find that HNM is incapable of protecting his interests with regard to his affairs due to Manic Depressive Psychosis; a condition characterized by episodes of relapses and remissions lasting up to six months.

3. THAT the applicants herein PSNM and JNM be appointed as guardians ad litem for HNM

4. That this Honourable Court be pleased to give any other or further directions that it may deem fit for the best interests of the properties, medical and legal affairs of HNM

5. That costs of the application be provided for.

3. The grounds for the application are on the face of the application and reiterated in the joint Supporting Affidavit sworn by the applicants on 4th October 2021. The grounds are;

a) THAT applicants are brothers to HNM who is the registered owner and/or proprietor of ALL THAT parcel of land known as Ngariama/Merichi/xxx measuring approximately 0.405 Hectares; and has been in possession ever since the Title Deed was issued on 5/3/1997.

b) THAT the said HNM is and has been suffering from Psychiatric condition called Manic Depressive Psychosis, which condition is characterized by episodes of relapses and remissions lasting up to six months and as such, he is incapable of protecting the interests hence its necessary to appoint a guardian ad litem for him.

c) THAT as a result of the said medical condition, the said HNM does not have the mental capacity to take care of his properties, medical and legal affairs.

d) THAT notwithstanding however, a third party is in the process of fraudulently transferring properties belonging to HNM without any whatsoever colour of right.

e) THAT the applicants are in the process of pursuing legal redress against the third party to in any eventuality obtain orders prohibiting the said third party from selling, disposing and/or interfering in any way whatsoever way with the property belonging to HNM.

f) THAT the applicant is coy and apprehensive that unless the honourable court diligently intervenes to in any eventuality appoint the applicants herein as guardians ad litem for HNM; protecting his property, medical and legal affairs will merely remain linchpin in futility.

g) THAT it is in the best interest of the properties, medical and legal affairs of HNM in upholding the provisions of Order 2 Rule 14, Order 32 Rule 15 of the Civil Procedure Rules and the general Circumspect of the Civil Procedure Act, that the applicants are requesting this honourable court to grant the orders herein sought.

4. The application is supported by the annexures to the affidavit to wit official search for LR Ngariama/Merichi xxx in the name of Henry N. Macai, letters from hospital indicating that the subject suffered Manic Depressive Psychosis on and off since 14th May 1994, his retirement letter, on medical grounds, 2005, evidence of follow up and District Hospital Psychiatry Clinic since 1991, recent (26th November 2021) assessment by consultant psychiatrist Dr. Njau JW, that subject suffers from Alzheimer's Dementia, letter from consultant physician that the subject aged 56, suffers major depressive illness/alcohol use disorder, poor concentration, disorganized train of thoughts and poor judgment, proposing involuntary admission to psychiatry unit for treatment and rehabilitation.

5. Order 32 of the Civil Procedure Rules provides for the Application of rules to minors and persons of unsound mind. **Order 32, rule 15** specifically provides;

“The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind, and to persons who though not so adjudged are found by the court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.”

6. The only issue is whether the application is merited.

7. I called for the subject to appear before me. He did so virtually and I observed his demeanor and manner of responding to questions. He confirmed that he was unwell and was living with one of his brothers and that he was undergoing treatment. He could not recall the last time he was in hospital but was aware that some of his property was missing or something was wrong with it but he had no idea what had happened.

8. Order 32 of the Criminal Procedure Code makes provision for the appointment of guardian ad litem for minors or persons of unsound mind who are adjudged as incapable of taking care of their interests when they are suing/being sued. It is evident that in this case, according to the brothers, there is need to pursue the interests of the subject in the aforementioned property, and without help, the subject does not have the capacity to do so.

9. I have taken into consideration the evidence in the affidavits, and in particular the medical reports from the consultant physician and consultant psychiatrist. I am persuaded that the application is merited.

10. The applicants have demonstrated that they are brothers of the subject, he identified them as such in court. They have annexed their identity cards, and that of the subject. They are willing to act as his guardians *ad litem*, hence, they are suitable for appointment.

11. The application is therefore allowed and the applicants are appointed as guardians *ad litem* for Henry Ndambiri Macai, with respect to any suit by or against him and in particular with respect to LR Ngariama/Merichi/xxx.

12. Costs in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF DECEMBER, 2021

MUMBUA T MATHEKA

JUDGE

In the presence of:

CA Lepikas

For applicants: Wamaasa, Masese, Nyamwange & Company Advocates