



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KIAMBU
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION CASE NO. E022 OF 2020
IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 OF THE LAWS OF KENYA
AND
IN THE MATTER OF: PROF. DGG
(A PERSON SUFFERING FROM MENTAL DISORDER)
AND
IN THE MATTER OF AN APPLICATION BY PMG TO BE APPOINTED GUARDIAN OVER THE AFFAIRS AND MANAGER
OF THE ESTATE OF PROF. DGG

JUDGMENT

1. **P.M.G.** is the son of the subject hereof. He filed this petition seeking the subject be adjudged a person's suffering from mental disorder and that he, the petitioner, be appointed the subject's guardian and manager of the estate of the subject. In the final prayer, the petitioner sought that he and his mother, wife of the subject do register a company as its promoters and directors to transfer the property (no title number is given) into that company.
2. In the petitioner's affidavit he deponed that it was only he and his mother who are the surviving relatives of the subject. The petitioner also deponed that the subject was diagnosed with Alzheimer dementia a condition that is progressive and irreversible. The petitioner stated that he seeks he be appointed guardian of the subject as provided under the Mental Health Act.
3. When this petition was brought to my attention, on 24th November, 2020, I ordered the petitioner to file a letter of his local chief confirming to the court the relatives of the subject. It would seem that this prompted the petitioner to divulge the full extent of the subject's relative, although this is how he put it in his further affidavit dated 14th December, 2020:-

“That I am informed by my advocate on record which information I verify believe to be true, that is my supporting affidavit they erroneously listed the surviving family members as only my mother and myself an error that was occasioned by misunderstanding about my late brother.”
4. The petitioner attached to his said further affidavit a letter of the Chief Ikinu location Githunguri dated 8th December, 2020. That letter revealed that the subject has 4 children with his wife.
5. The prayers sought in the petition were opposed by L.W.G. a daughter in law of the subject. In that affidavit, the daughter in law listed 13 properties in the name of the subject some jointly registered in the joint names of subject's and his wife's.
6. The daughter in law, by virtue of being married to the subject's deceased's son, deponed that there is ill motive in the present petition. She revealed a picture of a tug of war over the subject's property between her and the petitioner, whereby the petitioner has used lawyers to demand her to vacate one of the properties of the subject which she alleges is her matrimonial home. The daughter in law did further depone that there were some other efforts used by the petitioner to illegally get her out of the property, that is that the petitioner hired goons to threaten her and her children. The matter was reported to the police.
7. What is of concern to this Court is the deposition of the daughter in law that the subject is not in need of care and attention because he

resides with and is taken care by his daughter R.W.G. The daughter in law did also disclose that although the subject is ailing one of the subject's property was disposed. Those dispositions were not rebutted by the petitioner

ANALYSIS

8. The tenor of the **Mental Health Act Cap. 248** is that any orders made thereof should always be for the welfare of the subject. That does not seem to be what is represented by the petition before court. It is clear that the petition before court was motivated by other motives not for the welfare of the subject. In my view, the petition in filing the present petitioner had ulterior motive. The holding in the case ***In re N.M.K. (2017) eKLR*** is very fitting to the facts in this petition where the court stated:-

“12. It is quite clear from this answer that the real motivation for the present Application is to dispose off the Subject's property. It is readily clear that such disposition is not measured to cater for the needs of the Subject but the Applicant's overall views about who should inherit the Applicant's land. In forming these views, it was obvious to the Court that the Applicant still regards the land belonging to the Subject as the Applicant's land to do as she wished. ...

18. Second, and related, I am not satisfied that the Application has been brought in the best interests of the Subject or that the Subject's property will be used in her best interests.”

9. Similarly, this Court is not satisfied that this petition is brought for the interests of the subject.

10. It is important to state that there is need for the police to investigate how the subject's property parcel NO. xxxx was transferred on 21st February, 2020 when there is a doctor's report dated 30th April, 2020 which shows the subject has been suffering from Alzheimer dementia which has progressively deteriorated to the extent that the subject cannot communicate.

DISPOSITION

11. In the circumstances, I am unable to grant the orders sought in this petition. The same is dismissed.

12. Orders accordingly.

JUDGMENT, SIGNED DATED AND DELIVERED AT KIAMBU THIS 16TH DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Maurice

For Petitioner : **Mr. Otieno his brief held by Mr. Opere**

For Respondent : **Ms. Njoroge Present**

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE