



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISCELLANEOUS APPLICATION NO. E033 OF 2020**

**IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA**

**AND**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF GUARDIANSHIP OF GWM (A PERSON SUFFERING FROM A MENTAL DISORDER)**

**RMM.....PETITIONER**

**RULING**

1. By a Chamber summons dated 9<sup>th</sup> September, 2020 brought under **sections 26(1) and (3) and section 28** of the **Mental Health Act, Cap 248 Laws of Kenya, sections 1A and 3A** of the **Civil Procedure Act** the Petitioner/Applicant sought orders of the court in terms of prayers 2 and 3 that:

a) The Applicant be appointed as interim guardian/manager of the estate and over the affairs of GWM (hereinafter the Subject) and to thereupon access, make enquiry, take inventory, take control and manage all the estate of the Subject and in addition take all preservatory measures thereto pending the hearing and determination of the Petition.

b) The Applicant be granted the power to apply for the renewal of the Equity Bank Account No. xxxxxxxxxxxx ATM Card and to run and operate the account for the benefit of the Subject's health and for his sustenance pending the hearing and determination of the Petition.

2. The application is premised on grounds that GWM suffers from Alzheimer's, a neurological condition that has severely impaired his cognition and memory. The Subject is incapable of making informed and reasoned decisions concerning himself, his family and matters to do with this estate. That as a result, the Subject's personal affairs and estate require immediate care, attention and preservation.

3. In the supporting affidavit sworn on 9<sup>th</sup> September, 2020 by the Petitioner/Applicant, she deposes that she is the wife to GWM having been married by him on 14<sup>th</sup> September, 1991. A copy of a marriage certificate of serial number xxxxxx is annexed to the application. Their union is blessed with five (5) children one of whom is now deceased.

4. Before his retirement, the Subject was a [particulars withheld] and continues to earn a pension to date. The monthly pension is paid to his account held at Equity Bank of Kenya A/c No. xxxxxxxxxxxx, which expired in March 2020. A copy of the ATM card is on record. Rose asserted that due to his mental condition, the Subject constantly requires medical attention, which include regular check-ups and follow ups. That since the expiry of the ATM card, it has been difficult for herself and her family to meet the medical obligations of the Subject and the Bank has since informed her that she needs a court order to renew the ATM card.

5. The Applicant annexed a letter dated 15<sup>th</sup> June, 2020 from Dr. Nafula E. Wekesa, a palliative care and pain management specialist, which states that the Subject is known to suffer from Alzheimer's dementia, hypertension and diabetes and has been under her care for over a year with regular home based care. That as such, he is not of sound mind to make any decisions for himself and is currently under the care of his wife and children.

6. The Application was filed under Certificate of Urgency. On 14<sup>th</sup> September, 2020 the court certified the application urgent and directed that the matter be listed for hearing on 28<sup>th</sup> September, 2020 and that the application be served upon all of the Subject's children.

7. The Petitioner/Applicant and three (3) of the deceased's children were present in court at the hearing of the matter on 28<sup>th</sup> September, 2020. All three (3) children were agreeable to their mother, the Petitioner/Applicant being appointed interim guardian/ manager over the Subject's affairs.

8. I have perused the pleadings filed in this matter, and in view of the expert opinion of Dr. Nafula E. Wekesa the palliative care and pain management specialist, I am persuaded that GWM, the Subject herein, is a person who is suffering from a mental disorder as envisaged under the provisions of the **Mental Health Act**. He is therefore incapable of taking care of himself and conducting his own affairs.

There being merit in the Chamber Summons dated 9<sup>th</sup> September, 2020, I hereby allow it in the terms proposed by the Petitioners/Applicants in prayers no. 2 and 3. It is so ordered.

**DATED SIGNED AND DELIVERED IN OPEN COURT THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2020.**

**L. A. ACHODE**

**HIGH COURT JUDGE**