



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

MISC. APPL. NO. 156 OF 2014

IN THE MATTER OF THE APPLICATION PURSUANT TO SECTION 26(1)(B) OF THE MENTAL HEALTH ACT FOR THE APPOINTMENT OF GUARDIANS OF MS. MMW, AN ALLEGED INCAPACITATED PERSON

SNW.....1ST PETITIONER

GGW.....2ND PETITIONER

MGG.....3RD PETITIONER

VERSUS

JKW.....1ST RESPONDENT

SI2ND RESPONDENT

RULING

1. Before this court a petition was filed by the petitioners SNW, MGG and GGW under the provisions of the **Mental Health Act (Cap 248)** to determine whether their mother MMW has mental disorder and illness and therefore not able to manage her own affairs. The petition sought that the petitioners be appointed as guardians to manage her affairs if she is declared to be a mental patient.

2. The subject owned [particulars withheld]. It was alleged in the petition that the subject's two children (the respondents JKW and SI) had unlawfully and fraudulently subdivided her land into various parcels and had transferred to themselves some of the subdivisions. The petition sought temporary and mandatory injunctions in respect of all the subdivisions and for an order that the respondents do return the subdivision titles to the Lands Registrar for revocation.

3. The respondents defended the petition. They stated that although their mother was elderly at age 93 she was neither senile nor mentally incapacitated. They questioned the authenticity of the medical reports that the petitioners had relied upon. Lastly, they stated that their mother had gone to the Land Control Board and petitioned the subdivision of her parcel of land.

4. In motions dated 27th September 2017 and 14th November 2018 the petitioners sought orders to conserve the land parcels and to restrain the respondents from selling, disposing, leasing or in any manner dealing with the parcels. The respondents opposed the application by filing grounds of opposition in which they alleged that the applications were incompetent, had been brought late and that they were misconceived.

5. Whether or not land parcel [particulars withheld] was illegally and/or fraudulently subdivided and some of the portions appropriated by the respondents are complaints that cannot be heard and determined under any of the provisions of the **Mental Health Act**. The complaints belong to the jurisdiction of the Environment and Land Court created under **Articles 162(2)(b) and 165(5)(b)** of the Constitution and **section 13** of the **Environment and Land Act**. This court does not have jurisdiction to hear and determine the dispute in the petition relating to the respondents' alleged dealing the subject's parcels of land. It follows that the prayers in the petition dated 1st September 2014 relating to the parcels of land and the motions dated 27th September 2017 and 14th November 2018 are incompetent and are struck out.

6. Regarding whether or not the subject suffers from mental disorder or illness to the extent that she is unable or incapable of managing her affairs, the court has jurisdiction under **section 26(3)** of the **Act** to make an inquiry to establish the extent of her mental disorder.

7. Justice M. Mugai conducted an inquiry and received oral evidence and observed that the medical report on which the petitioners relied was

contested. The medical report relied on in the petition stated that the subject had been examined by a medical doctor on 25th July 2014 at Kiambu District Hospital and found to have senile dementia owing to old age, and that she could not recall or make an informed decision. The report had been signed by Dr. S. Karianki of the Hospital. The Doctor was not made available to testify to support his report. Instead the petitioners called Dr. Kevin Nguringa (a general practitioner at the Hospital) to produce the report. Dr Kevin Nguringa stated that he had himself examined the lady on 18th April 2016 and found her senile and suffering from dementia. When the Doctor was cross-examined it turned out that he worked at Accident and Emergency Department of the Hospital, and not in the Psychiatry Department. The Doctor did not say he was a psychiatrist or that he had been managing psychiatric patients. There was no evidence that Dr. S. Karianki was a psychiatrist.

8. To determine that a person has mental disorder requires irrefutable medical evidence. This is because a person who suffers mental disorder loses the capacity to sue or to enter into any contract. He cannot manage his life.

9. It is my finding that there was insufficient evidence placed before the court to enable the finding that the lady in question had any mental disorder or illness, or had such disorder or illness that she was incapable of managing her life and property. That result is that the petition has no merits.

10. I dismiss the petition and applications with costs.

DATED and DELIVERED electronically at NAIROBI this 27TH day of OCTOBER 2020.

A.O. MUCHELULE

JUDGE