



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
FAMILY DIVISION
MISC. PETITION NO. 38 OF 2020
IN THE MATTER OF THE MENTAL HEALTH ACT (CAP 248) LAWS OF KENYA
IN THE MATTER OF NNN
AND
IN THE MATTER OF AN APPLICATION BY SMN AND AWN TO BE APPOINTED AS THE GUARDIANS
AND MANAGERS OF NNN (A MENTALLY INCAPACITATED PERSON)

RULING

1. Before me is a Chamber Summons dated 10th March, 2020 filed by SMN and AWN, under Section 26 and 28 of the Mental Health Act (*Cap. 248*).
2. The application was filed after the filing of a substantive petition and seeks the grant of interim orders as follows –
 1. (spent)
 2. That pending the hearing and determination of the petition this Honourable Court be pleased to appoint the petitioners/applicants SMN and AWN as Guardians of NNN with powers to take any action necessary to seek and obtain medical treatment for NNN and any action that may ensure his good care, accommodation and general comfort.
 3. That pending the hearing and determination of this petition, this Honourable Court be pleased to appoint SMN and AWN as the managers of the estate of NNN with power to –
 - i. Immediately take charge and manage his properties including –
 - a. 1.5 acres of the family farm LR No. ***** Kiambu, which was bequeathed to him by his mother, the late MWN pursuant to a confirmed grant of representation in Nairobi Succession Cause No. 1242 of 2004.
 - b. The property known as LR No. *****, Kiambu which he had held equally with his brother the late SKN who died in 1996 but who predeceased him and has now devolved to him absolutely.
 - c. All assets in which he is registered or has beneficial interest.
 - ii. Collect income from all his assets and/or those that he has a beneficial interest therein.
 - iii. Execute all court documents and all relevant documents on his behalf.
 - iv. Carry out all other incidental and general functions that ought to be carried out by him.
 - v. Pay costs necessary for the treatment and management of NNN which will be borne out of the income generated from the estate.

4. That the costs of this application be in the cause.

3. The application has grounds on the face of the Chamber Summons. The grounds are that the applicants are the sisters and the only known close relatives of the subject who is mentally unwell and currently attended to by Dr. Fredrick R. Owiti a Consultant Psychiatrist at Chiromo Lane Medical Centre on medical treatment, and that he is under the general care of the applicants since he has no wife and children. It is also a ground that it is in the interests of justice that the orders sought be granted.

4. Having considered the application and documents filed in support thereof, I note that under the provisions of Section 26 of the Mental Health Act, this court has jurisdiction to grant orders for the management of the estate of a person, if it considers that such person suffers mental incapacity as a result of which he or she cannot manage his or her affairs. In particular, **Section 26(1) and (2)** provides as follows:

“26(1) The court may make orders –

a. for the management of the estate of any person suffering from mental disorder; and

b. for the guardianship of any person suffering from mental disorder by any near relative or by any other person.

(2) where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of such person.

5. Though the present application was not initially filed with a copy of a medical report on the subject, I have been availed and seen and perused a medical report on the subject dated 16th December 2019 signed by Dr. Fredrick R. Owiti a Consultant Psychiatrist in which it was recorded that the subject NNN suffered from schizophrenia, which in my view is a condition that could possibly make him incapable of managing his affairs, and so requiring this court's intervention.

6. The Chamber Summons herein being a preliminary application for interim orders pending the hearing and determination of the main petition, I allow the application and order as follows:

1. I grant prayers 2 and 3 of the application, pending the hearing and determination of the main petition herein.

2. This matter will be mentioned on 1st December, 2020 for a report on what the guardians have done thus far with respect to managing the subject and for direction regarding the hearing of the main petition herein.

3. Costs are in the cause.

Dated and delivered at Nairobi this 26th October, 2020.

George Dulu

JUDGE

Delivered virtually due to the COVID-19 pandemic and applicable Ministry of Health regulations.