



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS APPLICATION NO. 8 OF 2019

IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF KK

(A PERSON SUFFERING FROM A MENTAL DISORDER)

JKK1.....1ST APPLICANT/PETITIONER

JKK2.....2ND APPLICANT/PETITIONER

JMK.....3RD APPLICANT/PETITIONER

RULING

1. By a Petition dated 22nd January, 2019 brought under **sections 26, 27, 28 and 29** of the **Mental Health Act (Cap 248) Laws of Kenya**, the Petitioners sought for orders that the Applicants be appointed legal guardians of KK and be allowed to administer the estate and bank accounts of KK.
2. The application is premised on the grounds that KK, aged about 94 years is incapacitated and unable to handle his affairs following hospitalization at the Nairobi Hospital High Dependency Unit since 13th December, 2018. The patient requires continuous medical attention which has seen him accrue a hospital bill which stood at Kshs. 1,922,158.85/- as at 18th January, 2019. Under the circumstances however, the Patient is unable to carry out normal functions including operating or carrying out transactions at the bank.
3. The Petitioners urged that it was in the best interest of the Patient, to have them appointed as guardians of the affairs of the Patient to jointly manage all his properties. This includes accessing his bank accounts in order to apply funds towards settlement of the hospital bill which is escalating daily.
4. In a supporting affidavit jointly sworn by the Petitioners on 22nd January, 2019 the Petitioners deposed that KK, the Patient herein, is their biological father. That there are nine (9) children and the other six (6) have consented to the application to have the Petitioners appointed as legal guardians of their father, KK. A consent dated 22nd January, 2019 and signed by all the children of the Patient is attached to the application.
5. The Petitioners attached a letter from Dr. Martin N. Wanyoike the Patient's attending doctor, which states that the Patient is currently hospitalized at the Nairobi Hospital, High Dependency Unit, having been admitted to the Unit on 13th December, 2018. Attached to the letter is a copy of the Patient's Hospital Bill from Nairobi Hospital as at 18th January, 2019.
6. The Petition was brought under a certificate of urgency. On 22nd January 2019, the court certified it urgent and directed that the court be furnished with a letter from the Area Chief and that the other siblings do appear personally in court.
7. A letter dated 22nd January, 2019 by the Area Chief of Gathamba Location from which KK, the Patient herein, hails indicates that the Patient's wife Mrs. RNK is deceased and that he has nine children who include the Petitioners herein. A copy of Mrs. RNK's death certificate of number 217274 is on record. All the siblings of the Petitioners appeared in court on 28th January, 2019 and supported the application.
8. Having perused the pleadings filed in this matter and in view of the expert opinion of Dr. Martin N. Wanyoike, the Physician, I am persuaded that KK is a person suffering from a mental disorder within meaning of **section 2** of the **Mental Health Act**. I find that due to his need for continuous medical attention following hospitalization in the High Dependency Unit and senility, he is not capable of taking care of himself or conducting his own affairs.

9. There being merit in the Petition dated 22nd January, 2019, I hereby allow it in the terms proposed by the Petitioners in prayers no 1, 2 and 3 of the Petition.

It is so ordered.

SIGNED DATED and DELIVERED in open court this 29th day of January, 2019.

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L. A. ACHODE

HIGH COURT JUDGE