



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO. 28 OF 2019

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

LNN.....1ST APPLICANT/PETITIONER

JWK.....2ND APPLICANT/PETITIONER

8/04/2019

Hon. L. A. Achode, Principal Judge

COURT:

Pursuant to the power of the court to correct its own judgment or ruling, the Ruling delivered on 15th March, 2019 on “Appointment of legal guardian” is hereby corrected in the following manner:

- a) Paragraph 7 thereof, the word “deceased’s” should read as “subject’s”

The said paragraph when read in whole and in the context of the preceding text thereof can only bear its true meaning by use of the word “subject’s”. The correction, therefore, was an honest omission, and does not change the ruling of the court. In fact, the correction reflects the ruling of the court.

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L. A. ACHODE

HIGH COURT JUDGE

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RULING

1. Before this court for determination is a Petition dated 8th March, 2019 brought under **sections 26, 27 and 28** of the **Mental Health Act (Cap 248) Laws of Kenya**. The Petition seeks for orders that:

a) INM be adjudged to be a person suffering from a mental disorder under **section 26** of the **Mental Health Act**, Cap 248 of the Laws of Kenya.

b) The Petitioners be appointed guardians in respect of INM.

c) The Petitioners be appointed as the managers of INM’s estate which includes any such description of movable or immovable property, money, securities, debts and legacies; power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods; and to proceed to take over and/or institute any litigation and/or claims; and also to include not only such property as has been originally in the possession or under the control of any person but also any property into or for which the same has been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

2. The application is premised on the grounds that INM, aged about 69 years, has had memory defect since October, 2018. Following a medical assessment, he was eventually diagnosed with amnesia and possible early dementia. That INM is therefore incapable of care of himself and managing his estate.

3. The Petitioners aver that the subject’s estate comprises such movable and immovable properties of varying kind and value and unless a manager is urgently appointed, the subject’s estate will waste away. Further that the subject has dependants for whom he provides daily upkeep and maintenance, and farm employees who stand to suffer neglect if the estate is not urgently and properly managed.

4. LNN, the 1st Petitioner, swore an affidavit dated 8th March, 2019 in support of the Petition on behalf of herself and the 2nd Petitioner. She deposed that she is the wife to INM having been married by him on 27th December, 1975. A copy of a marriage certificate of serial number [particulars withheld] is annexed to the application. The 2nd Petitioner is their daughter as shown on the birth certificate of serial number [particulars withheld] annexed thereto. She and the subject have two homes: one at Salama area in Thika and at their farm in Kirinyaga. It is the subject who provides for their family and maintains her to date, and pays their farm workers.

L asserted that she first learnt of the Subject’s mental disorder on 18th October, 2018 when she received a letter from Kingdom Securities Limited stating that the subject had memory lapses while transacting his shares in his CDS Account of number [particulars withheld] and therefore requires a guardian appointed over his affairs. Letters from Kingdom Securities Limited dated 18th October, 2018, 9th January, 2019 and 28th January, 2019 are annexed to the affidavit. On 31st January, 2019 she took the subject to Mathari National Teaching and Referral Hospital where he was assessed and cosequently diagnosed with amnesia.

6. The Petitioners have attached a Psychiatric Report from Dr. Joseph Jumba, a Medical Superintendent at Mathari National Teaching and Referral Hospital. The report states that the subject is an elderly man who at the time of assessment had normal speech and normal mood. The examination revealed that the Patient had impaired memory on immediate and recent events, but his long term memory was fair. He had partial insight but lacked delusions or thought disorders. The doctor concluded that he had memory defect and hence suffers from amnesia and possible early dementia.

7. All the deceased’s children were present during the hearing of the matter. A letter from the Office of the Assistant Chief, Kariti location, Kirinyaga West Sub-County dated 13th March, 2019 produced in court confirms that the 1st Petitioner is the only wife of the subject herein.

8. Having perused the pleadings filed in this matter, and in view of the expert opinion of Dr. Joseph Jumba the Medical Superintendent, I am persuaded that the Subject 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 Petition dated 8th March, 2019, I hereby allow it in the terms proposed by the Petitioners. It is so ordered.

SIGNED DATED and DELIVERED in open court this 15th day of March, 2019.

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L. A. ACHODE

HIGH COURT JUDGE