



**REPUBLIC OF KENYA**

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

**PETITION NO 6 OF 2019**

**IN THE MATTER OF MN**

**DN.....APPLICANT**

**RULING**

1. The applicant has filed this application under certificate of urgency pursuant to the provisions of 26 (1) and 27 of the Mental Health Act (Cap 248) Laws of Kenya and sections 3, 3A and 63 (e) of the Civil Procedure Act (Cap 21) Laws of Kenya. He seeks the following orders.

- An order appointing him as a manager of the affairs of MN
- An order to make provision for costs.

2. The application is supported by five grounds that are set out on the face of the notice of motion and a 14 paragraphs supporting affidavit of DN

3. The grounds in support of the application are as follows. The subject of the application is old, illiterate and in poor health. Third parties have taken advantage of his disability and have deprived him of land parcel No. Cis-Mara/Olkinyei/[xxxx]. Due to his mental condition he may not be in a position of filing a suit to recover his said parcel of land. It is in the interest of justice that the application be allowed and DN be appointed as the manager of the affairs of MN.

4. In his supporting affidavit the applicant has averred to the following major matters. He has averred that he is aware that MN is the registered allottee of the said parcel of land. The applicant has annexed a copy of the group ranch register in which the name of MN appears as the allottee of the said parcel of land. He also filed a suit being E. L. C case No. 109 of 2017 at Narok with himself suing as a next friend of MN. The defendants were Lemondoi Ole Letoluo and 5 others.

5. On 11<sup>th</sup> October 2018 the suit was struck off by the magistrate on the grounds that given his medical and/ or mental condition, he should have filed his suit in the High Court under the Mental Health Act for only the High Court has jurisdiction to appoint the applicant as the next friend. The suit was struck out upon the application of the 5<sup>th</sup> defendant.

6. The applicant is apprehensive that since the 1<sup>st</sup> defendant is in possession of the said land; he may alienate it to defeat the claim of the applicant to that land.

7. Furthermore, the applicant has also averred that in view of the striking out of his application, it is necessary to file the matter afresh in the Environment and Land Court on behalf of MN.

8. The applicant has annexed a medical report from Kenyatta National Hospital dated 12<sup>th</sup> April 2013, which shows that MN is suffering from schizophrenia and brain atrophy secondary to a road traffic accident trauma. Furthermore, the report shows that MN was being treated by a psychiatrist doctor (Dr.Aluuvalia Seme). The report further shows that MN was a known hypertensive heart disease and osteoarthritis. MN was referred to a specialized mental treatment and possible review by a cardiologist. Based on his examination on 27<sup>th</sup> November 2017 the doctor found that the patient had really improved after using the prescribed medicines. He also found that the patient can connect, recall and interpret.

9. In the light of the foregoing medical evidence and failed attempts to recover his parcel of land, I find the following to be issues for determination.

1. whether or not the applicant has met the threshold for the grant of the orders sought.
2. Who bears the costs of this application?

**Issue 1**

10. This is an *ex parte* application. It is unopposed. I find that MN is unable to manage his affairs due to his mental illness and poor health. I further find that he filed a case in the magisterial court to appoint the applicant who is his nephew as the next of friend to enable him file a recovery suit in respect of his parcel of land. The magisterial court dismissed it for lack of jurisdiction, after it found that the court with the requisite jurisdiction was the High Court.

11. In the light of the foregoing considerations, I find that the applicant has met the threshold for the grant of the orders sought and hereby grant them. David Ngotiek is hereby appointed the manager of the affairs of Matunge Ngotiek.

**Issue 2**

12. There will be no order as to cost, since this is an *ex parte* application.

**Ruling signed, dated and delivered in open court at Narok this 28<sup>th</sup> day of October, 2019 in the presence of Mr. Kilele for the applicant.**

**J. M. Bwonwong'a**

**Judge**

**28/10/2019**