



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY AND PROBATE DIVISION

MISC. APPLICATION NO. 26 OF 2018

IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248

AND

IN THE MATTER OF A M T (A PERSON OF UNSOUND MIND)

IN THE MATTER OF: A PETITION FOR THE APPOINTMENT OF A GUARDIAN MANAGER FOR AMT AND ESTATE

BETWEEN

MMM.....1ST PETITIONER

TWM.....2ND PETITIONER

AND

TWW.....1ST RESPONDENT

EWV.....2ND RESPONDENT

ENW.....3RD RESPONDENT

R U L I N G

1. The Subject herein is one **AMT**. The 1st and 2nd Petitioners are his first wife and daughter. The 1st Respondent his 2nd wife, the 2nd and 3rd Respondents brother and sister of the Subject.
2. There were two pending applications dealing with the same issues being raised in the petition and the court directed that the same be dispensed with to allow hearing of the petition by way of affidavits and submissions.
3. The flip side of such a directive though meant to quickly dispose of the matter is that the veracity of averments is never tested by way of cross examination and the court does not get to observe the demeanor of the witnesses and in a case such as the one before court, the Subject remains just that as the court does not see the Subject nor get to make observation.
4. Simply put for now; the Petitioners seek to have the court a declaration that the Subject suffers from mental disorder and proceeds to appoint the Petitioners as managers of his Estate.
5. The Respondents on the other hand state that the Subject though sick has his mental faculty unaffected, does not need managers of his estate to run his affairs.
6. In order for the court to appreciate the two extreme positions taken by the parties the affidavit evidence and submissions thereof fall short of laying bare the facts and the truth.
7. Consequently I direct as follows:

- a. The parties do file statements and appear before court for cross examination as to their suitability and/or their averments.
- b. That the Subject be made available.
- c. The court would after (a) above if need, direct for examination of the Subject by an independent medical practioner.
- d. A date be fixed for hearing.

Dated and Delivered in Nairobi on this 19TH day of DECEMBER, 2019

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ALI-ARONI

JUDGE