



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

MISC. CIVIL APPLICATION NO 23 OF 2019

IN THE MATTER OF MARGARET MUGURE GITHINJI (SUBJECT)

AND

IN THE MATTER OF THE MENTAL HEALTH ACT, CAP 248

1. ELVIS MUTAHI GITHINJI

2. EDWIN GWANDARU GITHINJI

3. BOB GACHINGIRI GITHINJI

4. BERNICE SHELLIE WAMBERE GITHINJI....APPLICANTS

RULING

1. The four Applicants herein, **ELVIS MUTAHI GITHINJI, EDWIN GWANDARU GITHINJI, BOB GACHINGIRI GITHINJI** and **BERNICE SHELLIE WAMBERE GITHINJI** are the adult children of **MARGARET MUGURE GITHINJI** (hereinafter called the **Subject**). The Subject is the administrator of the estate of her late husband, Dadson Githinji Gwandaru vide Nyeri HC Succession Cause No 786 of 2013

2. What is sought in the application herein (which has been presented in the form of a petition dated 25/11/2019) are the following orders –

a. That **ELVIS MUTAHI GITHINJI** and **EDWIN GWANDARU GITHINJI** (the 1st and 2nd Applicants respectively) be appointed joint and several guardians of the Subject, Margaret Mugure Githinji.

b. That further, the two be appointed as joint and several managers of the estate of the Subject with the specific power to manage the Subject's named bank accounts with *New Fortis Sacco, Kenya Commercial Bank Ltd* (Nanyuki Branch) and *Equity Bank Ltd* (Nanyuki Branch) towards her daily sustenance, medical bills and upkeep.

3. There is a third prayer (c) which relates to a grant of probate made and issued in the aforesaid Nyeri HC Succession Cause No 786 of 2013 in the matter of the estate of Dadson Githinji Gwandaru, Deceased. That prayer is misconceived. What ought to be sought is an order for substitution of the administrator in the said succession cause; that order can only be sought in the said cause. It cannot be obtained in the present proceedings; so, I will deal only with the first two prayers.

4. I have read the three supporting affidavits sworn by the Applicants and have perused the documents annexed thereto. There is also a fourth supporting affidavit sworn by one **Dr Jacqueline Muema**, a medical doctor stationed at Nanyuki Cottage Hospital. To this affidavit is annexed a medical report dated 02/01/2019 on the Subject. It says in part that the Subject suffered a "*left fronto-parietal middle cerebral artery infarctive stroke*", and that she was put on supportive management with physiotherapy, and medication to prevent a recurrent stroke.

5. Upon the direction of the court the Subject was availed in court at the hearing of this application. The court tried to speak with her. She was totally unresponsive, as if she could not hear or comprehend what was said to her. She only stared fixedly for some time and then would look away. She did not even respond to her name in any way at all. However, she was clean and well groomed, and it was obvious that she was receiving very good care from her children.

6. The Applicants aver that taking care of the Subject, especially the medical bills, has become very expensive for them. They need to have access to her bank accounts in order to be able to continue giving her the care she needs. They also aver that the Subject is totally unable to manage herself, her affairs or her estate.

7. Upon the material now before the court, I am satisfied that the Subject, *Margaret Mugure Githinji*, is now totally unable to manage herself, her affairs and estate following the stroke that she suffered. The application before the court therefore has merit, and I will allow it in prayers (a) and (b) only. As already pointed out, prayer (c) is misconceived and does not belong in these proceedings. It is hereby struck out.

8. Those will be the orders of the court.

DATED AND SIGNED AT NANYUKI THIS 18TH DAY OF DECEMBER 2019

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 19TH DAY OF DECEMBER 2019