



**REPUBLIC OF KENYA**

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

**PETITION NO. 60 OF 2018**

**IN THE MATTER OF SECTIONS 26, 27, 28 AND 29 THE MENTAL HEALTH ACT (CAP 248) LAWS OF KENYA**

**AND**

**IN THE MATTER OF A PETITION FOR ORDERS OF CUSTODY, MANAGEMENT AND GUARDIANSHIP RELATING TO F A A (PATIENT)**

**JUDGEMENT**

1. The petition dated 16<sup>th</sup> May 2018 seeks the principal order that the petitioner, D O A, be appointed as the guardian, custodian and manager of the estate of F A A (hereinafter referred to as the patient), with the powers enumerated in the said petition.
2. The petition is based on affidavits with supporting facts and evidence. The affidavit of the petitioner was sworn on 16<sup>th</sup> May 2018. The patient is the father of the petitioner. It is averred that the patient is elderly, his age being stated to be 96 years, and sickly, which has rendered him incapable of taking care of himself and his personal affairs.
3. The said petition was prosecuted on 24<sup>th</sup> and 25<sup>th</sup> May 2018. The petitioner testified, and so did the non-petitioner children of the patient. They gave vent to the averments made in the papers that had been lodged in court in support of the case. I shall not recite the evidence as the same is on record.
4. The petitioner has placed on record various medical reports to support his case. They all indicate that the patient has been receiving treatment over several years for hypertension with bronchospasm and prostate cancer. The medical report by Dr Philip Omondi dated 24<sup>th</sup> May 2018, states that as a result of the illness, his advanced age and the advanced stage of the prostate cancer, the patient's memory has been affected, and he now has episodic confusion and memory lapse. He opines that the patient is not mentally and physically able to transact any business.
5. The law which governs the handling of persons suffering mental illness is the Mental Health Act. It also provides for custody of such persons and the management of their estates. Part XII of the Act deals with the judicial power over persons and estates of such persons. Section 26 of the Act specifically provides for orders for custody, management and guardianship of such persons and their estates.
6. I am satisfied from the material before me that the patient is no longer able to manage himself and his affairs on account of mental disorder arising from the conditions that are documented in the medical report by Dr Omondi, that I have referred to above. I am also satisfied that a case has been made out for the appointment of the petitioner, as manager of the estate of the patient, who I have found to be suffering from mental disorder, and to act too as his guardian.
7. The position of the manager of the property and affairs the patient places the property of the subject in the hands of others. This would put the petitioner in a fiduciary position so far as the subject and his estate is concerned. This would make the petitioner a trustee, who then incurs the burden of accounting to both the court and to other affected persons, such as the children of the subject, with respect to the management of the said estate.
8. The orders that I feel bound to make in the circumstances are:-
  - (a) **That the patient, F A A, is hereby adjudged to be a person suffering from mental disorder;**
  - (b) **That the petitioner herein, D O A, is hereby appointed guardian of the said patient and manager of his estate and affairs;**
  - (c) **That prayer (b) of the petition is granted as prayed; and**
  - (d) **That the petitioner shall place before court at the expiry of every three (3) months from date hereof a full and accurate account of his handling of the estate and affairs of the patient.**

DATED, SIGNED and DELIVERED at NAIROBI this 31<sup>ST</sup> DAY OF MAY, 2018.

W. MUSYOKA

JUDGE