

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PETITION NO. 165 OF 2017

IN THE MATTER OF THE MENTAL HEALTH ACT (CAP 248 LAWS OF KENYA)

AND

IN THE MATTER OF I C K N AND E W K (PERS SUFFERING FROM MENTAL DISORDER)

JUDGEMENT

1. The petition dated 15th December 2017 seeks the principal orders that the petitioners, J T K, S W K and P W K, be appointed as the guardians of I C K N and E W K (hereinafter the subjects) and that they be appointed managers of the affairs and estates of the subjects, with the powers enumerated in the said petition. The petition is supported by an affidavit with supporting facts and evidence. The affidavit of J T K was sworn on 15th December 2017. The subjects are the petitioners' father and mother, respectively. It is averred that the subjects have been diagnosed with dementia, which has rendered them incapable of taking care of themselves and their personal affairs.

2. The said petition was prosecuted orally on 9th and 17th May 2018. The petitioners testified, and so did the non-petitioner child of the subjects (L M K). They gave vent to the averments made in the papers that had been lodged in court in support of the case. I need not rehash the testimonies as they are on record. The petitioners have placed on record medical reports by Dr Pius A. Kigamwa, a consultant psychiatrist, who has been attending to both the subjects. The reports are dated 4th December 2017 and 7th December 2017, respectively. He states in both reports that the subjects suffer from dementia, which is a form of chronic mental condition which impairs memory and behaviour. He opines that both are not capable of looking after their affairs. Material has also been placed before me indicating that J T K holds a power of attorney from I C K N with respect to certain assets of the estate. Such power would no doubt be unaffected by the outcome of these proceedings.

3. 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.

4. I am satisfied from the material before me that the subjects are no longer able to manage themselves and their affairs on account of mental disorder arising from the conditions that are documented in the medical reports of Dr Kigamwa that I have referred to above. I am also satisfied that a case has been made out for the appointment of the petitioners as managers of the estates of the subjects, who I have found to be suffering from mental disorder, and to act too as their guardians.

5. The position of the manager of the property and affairs of the patient places the property of the subject in the hands of the petitioner. This would put the petitioner in a fiduciary position so far as the subject and his estate is concerned. This would make 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.

6. The orders that I feel bound to make in the circumstances are:-

(a) That the subjects, I C K N and E W K, are hereby adjudged to be persons suffering from mental disorder;

(b) That the petitioners herein, J T K, S W K and P W K, are hereby appointed guardians of the said subjects and managers of the estates and affairs of the said subjects;

(c) That prayers 2, 3 and 4 of the petition are granted as prayed; and

(d) That the petitioners shall place before court at the expiry of every three (3) months from date hereof a full and accurate account of their handling of the estates and affairs of the subjects.

DATED, SIGNED and DELIVERED at NAIROBI this 25TH DAY OF MAY, 2018.

W. MUSYOKA

JUDGE