

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CASE NO. 3 OF 2018

IN THE MATTER OF APPLICATION BY D M M AND OF THE MENTAL HEALTH ACT, CAP 248

AND

IN THE MATTER OF APPLICATION FOR ORDERS OF CUSTODY MANAGEMENT AND GUARDIANSHIP OF E E N G

RULING

1. The petition dated 19th December 2017 seeks two principal orders:-

(a) That the petitioner, D M M, be appointed as the legal guardian of the patient, E E N G; and

(b) That the petitioner be directed to file accounts about the health and assets of the patient.

2. The petition is supported by an affidavit with supporting facts and evidence, or verifying it. The affidavit of the petitioner was sworn on 19th December 2017. The patient is the applicant's wife. He avers that she suffers a health disability which has affected her mental and physical ability, for she is unable to communicate effectively and to take charge of her daily chores nor is she able to manage her businesses, property and finances. He pleads with the court to appoint a guardian for the patient and an administrator for her property and assets. He undertakes that in the event the orders are made he would render a true account of the management of the property and assets of the patient.

3. The matter was prosecuted orally on 19th April 2018. The petitioner testified, and gave vent to the averments made in the papers he had lodged in court in support of his case. He stated that the patient's condition arose from a road traffic accident on 14th July 2017. When the patient went for surgery, she lapsed into a coma, and got into a vegetative state. She is currently under the daily care of two nurses at home. His daughter, D W M, who is also daughter of the patient, testified next. Her testimony mirrored that of the petitioner in material particulars. She indicated that she had no objection to her father being appointed guardian to her mother and the manager of her estate.

4. Prior to the hearing the court had directed, on 5th April 2018, that a signed copy of the radiology report dated 11th October 2017 be signed by the maker, a Dr Waa. In addition, that the petitioner do file a medico-legal report. The petitioner did not comply with those directions. The report by Dr Waa is yet to be signed, while at the hearing he did not produce a medico-legal report, instead he availed a photocopy of a routine medical report, in medical jargon, prepared for consumption of medical staff on 20th September 2017 by Dr Benjamin Njihia. I had also directed on 23rd January 2018 that the doctor treating the patient be availed to tender evidence. That direction was ignored.

5. I am unable to make final orders with regard to the matter before the directions referred to above are complied with. It is critical that the petitioner files a medico-legal report for the consumption of the court, that is a medical report prepared purposely for use by the court. It should be in clear and simple language that can be understood by laypersons on matters medical. The matter was brought to court in January 2018, yet the medical report presented was generated in August 2017, within less than a month after the patient suffered her injuries. There is no up-to-date record of her condition as at the time the matter was taken to court.

6. I shall direct that the petitioner complies within thirty (30) days. The matter to be mentioned thereafter. In default the matter shall stand dismissed.

DATED, SIGNED and DELIVERED at NAIROBI this 18TH DAY OF MAY, 2018.

W. MUSYOKA

JUDGE