



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA KIAMBU**

**PETITION CASE NO. 9 OF 2016**

**IN THE MATTER OF SECTION 26 OF THE MENTAL HEALTH ACT CAP 248**

**AND**

**IN THE MATTER OF J M M (SUBJECT)**

**T W M.....APPLICANT/PETITIONER**

**RULING**

1. By a Notice of Motion and Petition dated 2/11/2016, the Applicant sought the following orders:

- a) That the Petitioner be appointed guardian/manager of the affairs of **J M M** (Subject).
- b) That there be such orders as may be fair and just

2. The Application and Petition are premised on the grounds *inter alia* that the Petitioner is the Subject's wife; the Subject suffers from cerebral infarction and is incapable of protecting his interests and rights. Therefore, the applicant should be appointed as his guardian and manager of the Subject's affairs.

3. The Subject, **J M M** purportedly filed a replying affidavit which was expunged by the court, as it seemed to have been filed by a person claiming to be his second wife who was not a party to the matter.

**The Applicant's /Petitioner's case**

4. **T W M** filed a supporting affidavit dated 2<sup>nd</sup> November, 2016. She deponed therein that the Subject is her husband since 1972 and the couple is blessed with 6 issues. It was her averment that her husband suffers from cerebral infarction as confirmed by medical reports from different doctors. The reports are annexed to the affidavit. She stated that in the circumstances the Subject is unable to manage his affairs and that connen were taking advantage of the situation. Therefore, she sought to be allowed to manage his affairs as the appointed legal guardian/manager. The application was canvassed by way of oral submissions.

**Applicant's Submissions**

5. The applicant's counsel reiterated the contents of the Petition and depositions in the supporting affidavit of the Applicant. Counsel stated that the Subject suffers from mental disability –dementia-as indicated in the medical report by Dr. Makanyengo dated 9/3/2018. He further stated that the doctor's conclusion was that the subject needs assistance as he cannot manage his affairs.

6. It was contended that some of Subject's assets are threatened by alienation by 3<sup>rd</sup> parties hence the prayer that the wife of the Subject be appointed as his guardian and/or manager. His children and grandchildren were said to be willing to support the subject.

7. In view of the above, counsel prayed that the court allows the Petition.

**Analysis and determination**

8. I have considered the Petition filed on 2<sup>nd</sup> November 2016, the affidavit in support thereof, medical reports and also my own interview with the Subject. Evidently, the Subject is incapable of speaking coherently, understanding basic questions or even moving by himself. He is clearly incapacitated both mentally and physically.

9. In the circumstances, I grant prayer 1 of the Petition filed on 2<sup>nd</sup> November 2016. I further direct that the appointed guardian/ manager files reports into this court in respect of the management of the affairs/estate of the Subject at the end of every quarter of the year, commencing 30<sup>th</sup> July, 2018. The power to manage excludes the power of sale of any of the assets of the estate. Parties are at liberty to apply.

10. For the avoidance of doubt this ruling dispuses of the Petition and Notice of Motion filed on 2<sup>nd</sup> November, 2016 which contain substantially similar prayers.

**Delivered in open court at Kiambu this 21<sup>st</sup> Day of June, 2018.**

.....

**C. Meoli**

**JUDGE**

In the presence of:

Counsel for the Petitioner: Messrs Gikenye and Kimani

Nancy Mburu Court Assistant