



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI**  
**FAMILY DIVISION**  
**MISCELLANEOUS APPLICATION NO. 64 OF 2018**  
**IN THE MATTER OF THE MENTAL HEALTH ACT (CAP 248)**  
**AND**  
**IN THE MATTER OF J W K (PATIENT)**  
**AND**  
BERNICE WANJIKU GACHEGU.....1<sup>st</sup> APPLICANT  
ANGELA NJERI KAMAU.....2<sup>nd</sup> APPLICANT  
**RULING**

By an Originating Summons filed on 24<sup>th</sup> may 2018, the Applicants Bernice Wanjiku Gachegu and Angela Njeri Kamau;

- (a) That J W K be declared to be a patient with mental disorder under Section 26 of Mental Health Act Cap 248 Laws of Kenya.
- (b) That Bernice Wanjiku Gachegu and Angela Njeri Kariuki be appointed legal guradians of J W K (patient) and be appointed as managers of the estate and affairs of J W K..
- (c) That the court hereby orders Bernice Wanjiku Gachegu and Angela Njeri Kamau be made signatories and are authorized to access the bank and Cooperative Society accounts of J W K (Patient),

held in ;

- a) Kenya Commercial Bank (KCB) Account No 11\*\*\*\*
- b) K-Unity Sacco Account No 00\*\*\*\*
- c) Barclays Bank Account no 03\*\*\*\*
- d) Barclays Bank Account no 20\*\*\*\*
- e) Uplands Premium Dairy & Foods Cooperative Account No. 2\*\*\*\*\*
- f) Equity Bank Account No.00\*\*\*\*
- g) Jamii Cooperatives Savings & Credit Society Account Number 4\*\*

for general maintenance and medical expenses and support of J W K.

The Applicants are the children of the subject in this matter. The grounds for the Application are that the patient was diagnosed with

dementia on 5<sup>th</sup> November 2014 and has since deteriorated. She is advanced in age 80 years and lives with 1<sup>st</sup> Applicant to provide support and care. Due to her advanced age and medical condition, her ability to continue functioning independently has been severely affected and she cannot manage her affairs and wellbeing.

Attached to the application are various medical reports on the patient as follows;

a) Letter dated 6<sup>th</sup> April 2018 by Dr F. Njenga that confirmed; "Cognitive Assessment is that cognitive impairment present and recommendation is that diagnostic workup and care planning for cognitive decline".

b) Letter dated 9<sup>th</sup> May 2017 by Dr Catherine Syengo Mutisya that confirmed that the patient "has been on treatment for dementia since 5<sup>th</sup> October 2014. The disorder makes her memory impaired. She is not able to manage her property. and affairs"

The patient has six children as confirmed by letter dated 19<sup>th</sup> April from local administration Lari-Sub County. They have all given written consents to Applicants to be appointed legal guardian to J W K and legal Manager of her estate. They are;

- a. Bernice Wanjiku Gachegu
- b. Eric Kimuri Gitau
- c. Jennifer Muthoni Gitau
- d. Angela Njeri Kamau
- e. Linda Wanjiru Kariuki
- f. Jacklynn Kabugo Kamau

Due to the patient's deteriorating mental health, it has led to financial mismanagement of resources at her disposal and at times has no recollection of transactions that she authorized or are carried out.

The patient's medical bills continue to accrue and will require additional resources to ensure continuous quality medical care and support of the patient.

These orders are sought in the best interests of J W K the patient who is not capable of managing her affairs and well being due to mental incapacity..

Going by the evidence provided by the Applicants it is evident that the Patient suffers from a mental condition under the **Mental Health Act**. Her condition requires close medical attention, which the patient herself cannot supervise since she lacks the mental ability to handle her own finances.

#### **DETERMINATION**

The **Mental Health Act** is in place to ensure that individuals who suffer from mental illness are well cared for and their estates are properly handled. The **Mental Health Act**, at **Section 26** provides that:

***(1) The court may make orders—***

***(a) for the management of the estate of any person suffering from mental disorder; and***

***(b) for the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person.***

***(2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.***

***(3) Whereupon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder.***

From the evidence provided to this court the Applicants' quest is to take care of their mother by facilitating continuous medical care and attention and take care of her affairs and ensure her well being. The funds from her estate shall be used to settle the medical expenses and to ensure the patient is well taken care of. Based on the medical report and the medical records, the patient has been undergoing treatment for a while and lacks the mental capacity to perform any financial transactions It is in the Patient's best interest that her two children, the

Applicants, are appointed as her legal guardians and managers of her estate to settle the medical expenses and to ensure that funds are available for her upkeep.

**DISPOSITION**

In the circumstances the Court holds as follows:

- a) J W K is hereby declared as suffering from a mental disorder as per the Mental Health Act (Cap 248).
- b) Bernice Wanjiku Gachegu and Angela Njeri Kamau are hereby appointed as the managers of the estate of J W K
- c) Bernice Wanjiku Gachegu and Angela Njeri Kamau are hereby appointed as the legal guardians of the patient; J W K.
- d) The court hereby authorizes Bernice Wanjiku Gachegu and Angela Njeri Kamau to access the bank and Cooperative Society accounts held by J W K in;
- e) Kenya Commercial Bank (KCB) Account No 11\*\*\*\*
- f) K-Unity Sacco Account No 00\*\*\*\*\*
- g) Barclays Bank Account no 03\*\*\*\*\*
- h) Barclays Bank Account no 20\*\*\*\*\*
- i) Uplands Premium Dairy & Foods Cooperative Account No. 2\*\*\*
- j) Equity Bank Account No.00\*\*\*\*\*
- k) Jamii Cooperatives Savings & Credit Society Account Number 4\*\*\*

**DELIVERED DATED & SIGNED IN OPEN COURT AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER , 2018.**

**M. W. MUIGAI**

**JUDGE –FAMILY DIVISION –HIGH COURT**

**IN THE PRESENCE OF :**

**MWAURA & KIGUATHA ADVOCATES FOR APPLICANTS**