



**REPUBLIC OF KENYA**

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

**MISC. CIVIL CASE NO. 65 OF 2016**

**IN THE MATTER OF ADMINISTRATION OF THE ESTATE OF PERSON OF UNSOUND  
MIND ACT**

**AND IN THE MATTER OF THE MENTAL HEALTH ACT CAP 258 OF THE LAWS OF  
KENYA**

**RULING**

**TKN.....PETITIONER**

**VERSUS**

**BNW.....1<sup>ST</sup> RESPONDENT**

**RMN.....2<sup>ND</sup> RESPONDENT**

**DMN.....3<sup>RD</sup> RESPONDENT**

**EGN.....4<sup>TH</sup> RESPONDENT**

**JKN.....5<sup>TH</sup> RESPONDENT**

**RULING**

1. The application dated 18/5/2016 is brought under Section 3(1), 4, 8 (1) (2) (3) of the Administration of Estates of person of unsound mind Act, 9 (6), 10, 14 (1) (2) (a), 26 (a) (b), 27, 28, 33 of the Mental health Act Cap 258, Article 48, 57 (d) 60 (1) b, 165. The applicant seeks the following orders;

- i. That the 1st respondent be subjected to a medical examination and assessment in a mental facility or institution by a psychiatrist and a report be written to this court.
- ii. That the court be pleased to restrain the 1st respondent his servants, agents employees workers and or person acting under his instructions together with the 2nd, 3rd 4th and 5th respondents from withdrawing, removing any monies from his bank accounts or transacting in any legal processes an transaction over his properties, assets until the hearing and determination of this matter.
- iii. That the applicant either by himself or his appointed agent jointly with the 2nd respondent be and is hereby appointed as managers of the 1st respondent's estate which include any such description of moveable or immoveable property, money debts and legacies, power to execute sign all deeds and instruments relating to or evidencing the title or right to any proceed to take over

and/or institute ant litigation and/or claims and also to include not only such property as has been originally in the possession or under the control of a property into or for which the same has been converted or exchanged, and anything acquired by such conversation or exchanged, and anything acquired by such conversion or exchanged whether immediately or otherwise pending hearing and determination of this application.

iv. That **RMN** be appointed as guardian of the 1st respondent

2. The applicant is the biological son of the 1st respondent and he believes that his father is suffering from a mental disorder known as Alzheimer and lacks proper legal capacity and ability to manage, administer, control and transact over his properties assets and monies under him. That the 2nd respondent who is his mother and wife to the 1st respondent together with the other respondents have began exercising control, use and management of the 1st respondent's estate improperly and in an unlawful manner without obtaining the relevant requisite and mandatory orders from the court. As such he alleges that the 1st respondent's properties, estate, assets and monies stand to be lost abused or managed improperly in the event a proper manager is not appointed to administer control and manage them. That the 2nd, 3rd, 4th and 5th respondents have refused to provide him with access to information with regards to the 1st respondent's properties, assets , estate and bank accounts portraying mischief from the respondent. Adding that it was imperative that this court intervenes to safeguard and protect the rights of the 1st respondent, the applicant and other members of the family.

3. In his affidavit in support of the said application, the applicant reiterates the grounds as laid out on the face of the application. He however adds that he has noted with concern for the 1st respondent's conduct that he is not well he seems to have memory loss and at times cannot recognize things denoting that his situation is deteriorating. That he noted with concern that the 2nd, 3rd 4th and 5th respondents have started utilizing in monies from the 1st respondent's account in an imaginable manner like withdrawing monies from the 1st respondent's account and purchasing two motor vehicle without involving him. He avers that they are some accounts where the 2nd respondent is a signatory and if not checked the 2nd respondent is likely to utilize that money without prior consent and authority of the 1st respondent. That the 1st respondents' company Precious Heights Ltd entered into a joint venture with another real estate company where some monies were paid but the said respondents have refused to disclose to the applicant. That there also some other transactions that she is not aware of. Adding that the respondents are capable of taking advantage of the situation and circumstances to deviate monies from the 1st respondent to suit their needs.

4. The 2nd respondent in reply to the said application with authority of the other respondents opposed the said application. She avers that the applicant is intent on hijacking a process they as a family had begun for selfish reasons. She avers that she got married to the 1st respondent on 15th August 1981 and they were blessed with 4 children the petitioner, 3rd 4th and 5th respondents. She avers that it was only her and the 1st respondent as owners who knew of the 1st respondent's assets. That 3 years earlier they had appointed Berta Holdings Limited with approval from the 3rd 4th and 5th respondents to collect rental proceeds from the said rental properties as the petitioner had been tasked to do so but failed when he could not account for monies collected from the said rental properties. She avers that she has no intention to discriminate against any of her children. Adding that the alleged accounts were held jointly with the 1st respondent way before he was diagnosed with his condition

5. She admits that the 1st respondent was diagnosed with Alzheimer's a disease, which affects severe cognitive and memory impairment as stated in Dr. Juzah Hooker's medical report, dated 28th April 2016. All the while, the petitioner showed no interest on the 1st respondent and never even accompanied him to any of his hospital visits. Adding that the family had jointly decided to initiate a court proceeding to establish a trust to manage the estate. She avers that the allegation of undue influence is far-fetched and made in bad faith. Adding that the petitioner cannot claim he was not informed of the family activities as there are meetings held and though invited he never turns up though his wife always attends the same. She avers that the petitioner's action is ill thought and is aimed on creating animosity in the family. The respondent in turn urges to court to

i. Issue a declaration appointing the petitioner and 2nd, 3rd, 4th and 5th respondents as managers/administrator's/trustees of the estate of Benedict Ndungu Waweru.

ii. That the 2nd respondent be appointed the legal guardian of the 1st respondent.

iii. That for the effective day to day management of the estate, all decisions be made by majority vote during a meeting called for all trustees/ managers and or administrators.

6. The applicant filed a further affidavit on 10/10/16. He avers that he as a beneficiary is also entitled to know assets forming the 1st respondent's estate. He also sought the court to compel the 2nd respondent to furnish him with statements of bank accounts showing how monies are utilized and the intended purpose. Upon admission by the 2nd respondent on the 1st respondent suffering from Alzheimer's disease, he urges the court on the strength of the said admission to declare the 1st respondent mentally ill. He avers that since the 1st respondent is mentally unstable and in absence of court order the 2nd respondent's actions to purchase motor vehicles for pastors with the 1st respondent's resources was unlawful. He added that the mere fact that the 2nd respondent is a signatory to the 1st respondent's accounts does not signify proof of ownership as she is only entrusted as signatory and not owner. He avers that it is essential for appointment of a manager in administration of the estate for proper accountability adding he is okay with the 2nd respondent working jointly with his agent on the same. He is not opposed for the 2nd respondent to be appointed as a guardian to the 1st respondent. He proposes the court does appoint in the interim the petitioner and his agent and the 2nd respondent as managers to the said estate.

7. Parties made oral submissions, which was a reiteration of the averments in their affidavits.

8. This court on 1/10/2016 ordered the 2nd respondent to file a list of bank accounts and furnish the court with the same with the matter being set for mention on 9/11/2016. On the said date when the matter came for mention parties requested more time to try and agree since they had agreed on a number of issues. The meeting was arranged however, petitioner is said not to have attended or signed the minutes. Mr. Alosa for the respondents avers that during the meetings they arranged the petitioner had indicated that he did not intend to pursue the issue of bank statements and though he drafted consent, the petitioner refused to sign. On 14/12/16, the respondent wrote to him urging that they had to form a limited liability company.

9. The 2nd respondent in her further affidavit dated 15th December 2016, avers that upon marrying the 1st applicant on 15th August 1981 they worked together and acquired various properties and established successful business that they run diligently in the course of which they opened several bank accounts.

i. HFC [particulars withheld] - 49,338,671.76

ii. BBK [particulars withheld] - 9,710,164.10

10. The parties are in agreement on the status of the 1st respondent that he is suffering from Alzheimer's and the same has impaired his cognitive and memory this has been confirmed by Dr. Juzah Hooker's medical report dated 28th April 2016. It is evident that the 1st respondent is mentally ill and incapable of taking care of himself or his affairs.

11. The applicant and 2nd respondent are agreeable that the 2nd respondent be made guardian of the 1st respondent to take care of him.

12. As per the further affidavit of the 2nd respondent dated 15th December 2016 the applicant has been furnished with accounts and account balances of the said accounts held by the 1st respondent. He has not indicated that he will be insisting on being furnished with the bank statements to go through each item as such I find his concerns on the issue of accounts has been addressed.

13. The remaining issues relate to the management of the 1st respondent's estate. The applicant proposes that he and an agent be appointed alongside the 2nd respondent to manage the estate whilst keeping all the other family members informed on all that they will undertake. The 2nd respondent on her part wishes

to form a trust with all beneficiaries being managers or trustees of the 1st respondents estate and that they all be involved in decision making pertaining to the running of the estate's affair. I find that the 2nd respondent's proposal is more inclusive as it ensures all the beneficiaries will be involved in decision making on how to manage the state. To avoid an unnecessary stale mate the 2nd respondent requests that the

Managers/trustees will vote for various motions and decisions and the majority will carry the day. I find the same is reasonable and allow the same.

These are the Court's final orders:

- i. RMN is hereby appointed as Guardian to the 1<sup>st</sup> respondent, BW.**
- ii. The family shall form a trust with all beneficiaries being managers or trustees of the 1st respondents estate and they all be involved in decision making pertaining to the running of the estate's affair**
- iii. The Managers/trustees will vote for various motions and decisions and the majority will carry the day**
- iv. Costs in the cause. It is so ordered.**

**Dated, signed and delivered this 24<sup>th</sup> day of March 2017.**

**R. E. OUGO**

**JUDGE**

In the presence of;

**Mr. Njuguna H/b Mr. Mwaura.....For the Applicant**

**Mr. Alosa.....For the Respondents**

**MS. Charity**

**Court Clerk**