



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY AND PROBATE DIVISION
MISC. APPLICATION NO. 48 OF 2017
IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP
OF R H K D (A PERSON OF UNSOUND MIND)
B D.....APPLICANT

R U L I N G

1. By a Petition dated 31st March, 2017 brought under **Section 26 and 28** of the **Mental Health Act (Cap 248) laws of Kenya**, B D prays for orders of court that:

- a) The Applicant be appointed as guardian of R H K D with powers to take any action necessary to seek and obtain medical treatment for him.
- b) The Applicant be appointed as the Manager of the estate of R H K D with powers to:
 - i) Take all and any action necessary subject to provisions of the Mental Health Act for protection and preservation of the Estate of the R H K D.
 - ii) Take any other necessary action to preserve and protect the interests of R H K D.

2. The application is premised on grounds that R H K D (hereinafter the Subject,) is the Applicant's son and that he suffers from a disease of the mind that disables him from having any insight. That the Applicant requires to manage the medical treatment of the Subject.

3. The Applicant also states that the Subject is the principal shareholder of the [particulars withheld] Limited (hereinafter S) which is the registered owner of a property known as Land Reference Number [...] I.R.[...] (hereinafter Runda Home). That the Subject is also the Principal share Holder of [particulars withheld] Limited (hereinafter A).

4. In a supporting affidavit sworn on 31st March, 2017 the deponent B H K D depones that, she is the mother of the Subject, and his two siblings are B H K D and B H K D. That the Subject is married to A G D but they are currently separated and divorce proceedings are on-going in court.

5. That the Applicant later came to know that the Subject had charged the Runda home to secure a loan in [particulars withheld] Bank Limited. That she does not know how much money is currently owed to the said bank. That the Subject did not consult her when he charged the Runda Home to the bank.

6. That the Applicant is apprehensive that if the Runda Home is sold under the Bank's Statutory Power of sale, she and the Subject stand to suffer irreparable loss because, the Subject is presently mentally ill, that she will lose her matrimonial home that she and her late husband built and lived in. That the bank may sell the suit property and hand over the residue to S where the Subject is the Principal shareholder, who may misuse or waste the money as has been done to the rest of his father's estate.

7. The Applicant attached to her application among other annexures a medical report from Dr. Owitti the Consultant Psychiatrist at Chiromo Lane Medical Centre. The doctor observed that the Subject has mania evidenced by extreme grandiosity and narcissism. That this could alcohol related and that the Subject is likely to undergo extreme withdrawal from alcohol if he stays in incarceration for a long period without treatment.

8. I have perused the pleadings filed in this matter, heard the submissions of learned counsel M/s. Thondeka for the Applicant, and also read the medical report prepared by Dr. Owitti. From the foregoing I am persuaded that the Subject is a person who is suffering from a mental disorder. In view of the expert opinion of Dr. Owitti which states that the condition has rendered the Subject incapable of having insight and requiring treatment I find that he is not therefore able to take care of himself and to conduct his own affairs for moment. It is noted that he is currently admitted at Mathari Mental Hospital.

There being merit in the application dated 31st March, 2017, I hereby allow it as prayed by the Applicant, with the following orders:

- a) That the Applicant is appointed as guardian of R H K D with powers to take any action necessary to seek and obtain medical treatment for him.

- c) That the Applicant is appointed as the Manager of the estate of R H K D with powers to preserve and protect its interests.

The matter will be mentioned on 9th November, 2017 to review the position.

SIGNED DATED and DELIVERED in open court this **13th day of April, 2017.**

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L. A. ACHODE

JUDGE