



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PETITION NO. 64 OF 2017

IN THE MATTER OF SECTIONS 26 AND 28(1) OF THE MENTAL HEALTH ACT, CAP 248

AND

IN THE MATTER OF ESTATE OF L W M (PATIENT)

JUDGEMENT

1. The petition dated 28th April 2017 seeks two principal orders:-

- (a) That the petitioner, A W G, be appointed as the legal guardian of the patient, L W M; and
- (b) That the petitioner be appointed as the manager of the estate of the patient, with the powers enumerated in the said petition.

2. It is grounded an affidavit with supporting facts and evidence verifying it. The affidavit of the petitioner was sworn on 28th April 2017. The patient is the applicant's mother. She avers that the patient has been diagnosed with Alzheimer's dementia, which has rendered her confused and disoriented, to the extent that she is now demented, and incapable of taking care of herself and her personal affairs.

3. It was prosecuted orally on 11th and 16th May 2017. The petitioner testified, and gave vent to the averments made in the papers she had lodged in court in support of her case. Her brother, A M G, who has signed a consent in support of the application, also testified. He stated that the petitioner was the best suited to take care of the patient, given that he is based away from Nairobi, at Gilgil, and soon to move to Narok.

4. A brother of the patient, and a maternal uncle of the petitioner, R T M, also testified. He stated that he was the one currently housing the patient at his one bedroom house in Nairobi. He explained that the patient had meningitis, mental issues, tuberculosis and immune depression. He described her as forgetful and incapable of taking care of herself. He stated that it was his wife who was attending to the patient's daily needs, such as feeding and cleaning up after her mess, and giving her medication. She is also the one who takes her for clinic at Avenue Hospital. He explained that the patient sleeps on a mattress at their house. He concluded that the petitioner was best suited to be the patient's guardian.

5. The petitioner has placed on record a medical report by Dr Marx M. O Okonji, a consultant psychiatrist, who has been attending to the patient. The report is dated 10th April 2017. He states that the patient suffers from Alzheimer's dementia, which he describes as a chronic mental condition which impairs memory, personality and behaviour. He describes her short and long term memory as grossly impaired. He opines that she is not capable of looking after herself or her estate. He recommends that appropriate instruments be put in place to protect her.

6. The law which governs the handling of persons suffering mental illness is the Mental Health Act. It also provides for custody of such persons and the management of their estates. Part XII of the Act deals with the judicial power over persons and estates of persons suffering from mental disorder. Section 26 of the Act specifically provides for orders for custody, management and guardianship of such persons and their estates.

7. I am satisfied from the material before me that the patient is no longer able to manage herself and her affairs on account of mental disorder arising from the conditions that are documented in the medical report of Dr Marx M. O Okonji that I have referred to above. I am also satisfied that a case has been made out for the appointment of the petitioner, as manager of the estate of the patient, who I have found to be suffering from mental disorder, and to act too as her guardian. I have noted though that the patient is not living with the petitioner, but rather with her younger brother. It is imperative that once appointment is made herein that the petitioner arranges to share accommodation with the patient, so that she is able to directly take charge of her affairs, even if she hires a minder to care for her on a daily basis.

8. The position of the manager of the property and affairs the patient places the property of the patient in the hands of others. This would put the petitioner in a fiduciary position so far as the patient and the estate is concerned. This makes her a trustee. She is bound to account to both the court and to her brother of her management of the said estate.

9. The orders that I feel bound to make in the circumstances are:-

(a) That the patient, L W M, is hereby adjudged to be a person suffering from mental disorder;

(b) That the petitioner herein, A W G, is hereby appointed guardian of the said patient;

(c) That the said petitioner is also hereby appointed manager of the estate of the patient;

(d) That the order in (c) above shall be effective only after the petitioner has secured an appropriate residence for herself and the patient to the satisfaction of the court, and the patient shall be removed from the residence of R T M only with the leave of the court; and

(e) That the petitioner shall place before court at the expiry of every three (3) months from date hereof a full and accurate account of her handling of the estate of the patient.

10. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 19TH DAY OF MAY, 2017.

W. MUSYOKA

JUDGE