



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISCELLANEOUS CAUSE NO. 72 OF 2017**  
**IN THE MATTER OF THE MENTAL HEALTH**  
**ACT, CAP 248, LAWS OF KENYA**  
  
**AND**  
  
**IN THE MATTER OF S H G**  
**(PERSON SUFFERING FROM MENTAL DISORDER)**  
  
**AND**  
  
**IN THE MATTER OF SELLECTION OF GUARDIAN OF S H G AND MANAGER OF HIS**  
**ESTATE**  
  
**JUDGMENT**

1. The Petition dated 11<sup>th</sup> May 2017, filed on the same day, is supported by an affidavit sworn by S H G on the 11<sup>th</sup> May 2017. In the said application, the applicant prays for the following orders;

- a) That S H G, herein after referred to as the subject, be adjudged to be a person suffering from a mental disorder;
- b) That S H G, herein after referred to as the petitioner, be appointed guardian of the subject; and
- c) That petitioner be appointed Manager of the estate of the subject.

2. The petitioner is the elder brother of the subject and is a citizen of the United States of America, while the subject is an asylee of United States of America, currently residing in the Eastleigh area of Nairobi. The subject is the father of a six (6) year old daughter called C H G, who lives with him and his aunt, M M J. The subject is married to A A Y, who separated from him and moved back to Somalia.

3. According to the documents filed herein, the subject was diagnosed with Bipolar II mood disorder in 2009 by Dr. FR Owiti of Arrow Medical Centre. In 2011, Dr MM Okonji of Avenue Clinic came up with the same diagnosis. Later in 2012, he was diagnosed with Schizophrenia and admitted at Retreat Rehabilitation Centre. As per the petitioner's affidavit, the subject's mental condition is irreversible. The doctor attending to him recommended that he be placed under twenty-four (24) hour nursing care.

4. The medical note dated 1<sup>st</sup> March 2012 from the The Retreat Ltd, indicates that the subject exhibited inability to take care of himself, and has a deficiency in communication skills, time management skills,

interpersonal skills, lacked insight of his problems, among many others. The petitioner avers in his affidavit that ever since the subject was diagnosed with this condition, he, the petitioner, has been taking care of him and his daughter and would like to be appointed his guardian and the manager of his estate.

5. The matter was heard orally in chambers and the only witness availed to the court was M M J. The petitioner did not attend court, and therefore he did not testify to breathe life to averments made in his petition and affidavit. When she testified, M M J, did not state that she had a power of attorney from the petitioner, or any other form of authority for that matter, to prosecute the petition on his behalf. Ideally, M M J could only testify as a witness to support the petitioner's testimony. She could only testify as the principal witness where the petitioner had donated power to her to act as his attorney.

6. The law applicable with regard to this matter is the Mental Health Act, Cap 248, Laws of Kenya. Section 26 thereof defines a person suffering from mental disorder as a person who has been found to be so suffering under the Act. From the medical note dated 1<sup>st</sup> March 2012, the psychiatric symptoms of the subject were being managed by oral medication and psychotherapy. The intention was to instil in him survival skills. Daily supervision is also required to ensure compliance with medication.

7. The most recent medical material filed herein by the petitioner informing on the subject is that dated 1<sup>st</sup> March 2012. The application before this court is dated 11<sup>th</sup> May 2017, and was filed herein on the same date, which is almost four years since the subject's last evaluation. There is no up to date medical report, which makes it difficult for the court to assess his current condition and to give appropriate orders founded on that. It cannot be assumed that his condition has improved or worsened without upto date medical records

8. In view of the above, I do find that there is no merit in the petition before me. I shall accordingly dismiss the same with no orders as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 30<sup>TH</sup> DAY OF JUNE, 2017.**

**W. MUSYOKA**

**JUDGE**