



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**MISC CIVIL APPLICATION NO. 39 OF 2017**

**IN THE MATTER OF SECTIONS 26, 27, 28, 29 & 30 OF THE MENTAL HEALTH ACT,  
CHAPTER 248 LAWS OF KENYA**

**AND**

**IN THE MATTER OF SECTIONS 1A & 3A OF THE CIVIL PROCEDURE ACT, CHAPTER 21  
LAWS OF KENYA**

**AND**

**IN THE MATTER OF ORDER 32 AND ORDER 51 OF THE CIVIL PROCEDURE RULES 2010**

**IN THE MATTER OF THE ESTATE OF A N I**

**F J K I.....PETITIONER/APPLICANT**

**VERSUS**

**A N I.....PATIENT/RESPONDENT**

**JUDGMENT**

1. The petitioner/applicant Francis J K I husband to the patient/ respondent A N I came to court through Misc. Application dated 13<sup>th</sup> March, 2017 seeking

- (a) That the petitioner be appointed as the guardian and manager of the estate and affairs of A N I.
- (b) That the petitioner be authorized to access, transact, operate, withdraw and utilize funds from bank accounts No. [particulars withheld] with NIC Bank Ltd Karen Branch in the name of A N I to cater for the immediate expenses and care of the said respondent.
- (c) That this honourable court to make any and such orders as it may deem fit in the interest of justice.

2. Simultaneously filed with the substantive suit is Chamber Summons dated 13<sup>th</sup> and filed in court on 14<sup>th</sup> March, 2017 seeking similar orders. Hearing of the application was however compromised in favor of the hearing for the main application/petition.

3. The petition/application herein is premised on the grounds on the face of it and affidavit in support sworn by the applicant on 13<sup>th</sup> March, 2017 in which he averred that the respondent has been hospitalized since 2015 suffering from a state of coma due to acute seizures resulting to mental infirmity. That as a result of the said condition, the respondent has remained totally incapacitated both physically and mentally thus rendering her immobile and incapable of making decisions independently and therefore dependent on 24 hour nursing care while bed ridden.

4. As a consequence of the said illness, the applicant (husband) has spent huge sums of money towards medication, 24 hour nursing care thus exhausting all his sources of income hence the need to access some of the respondent's funds in various accounts to meet her necessary medical expenses as well as daily upkeep.

5. During the hearing, the applicant pleaded with the court to appoint him as guardian for purposes of managing and administering the estate of the patient/respondent and more particularly to access her bank accounts with a view to withdrawing cash for purposes of meeting her medical expenses. He produced consents from their children residing out of the country signaling that they are not opposed to the application.

6. Dr. Mativo (PW2) who has been treating the patient, gave evidence confirming the medical condition of the respondent thus corroborating the testimony of the applicant. The court Deputy Registrar who was directed by the court to visit the patient at her home filed a report dated 28<sup>th</sup> July, 2017 confirming the medical condition of the respondent which he described as very serious.

7. I have considered the petition herein, grounds on the face of it, affidavit in support and evidence by the applicant/petitioner. There is no dispute that the respondent is very sick, bed ridden, physically and mentally incapacitated. She is not able to make any independent decision as she has been in a comatose since 2015. The applicant is praying for authority to withdraw 500,000/= from one of the respondents' accounts in Eco Bank, Karen branch to meet her medical expenses and daily upkeep.

8. I am convinced that, in her health condition, the respondent is not capable of making any independent decision on her own. There is no objection from close relatives including her children who have filed their consents. In the circumstances, I am sufficiently persuaded that application is merited and same is allowed with orders as follows:

**(a) That the petitioner be and is hereby appointed as the guardian and manager of the estate and affairs of the respondent herein A N I.**

**(b) That the petitioner/applicant be and is hereby authorized to access, withdraw and utilize Kshs. Five hundred thousand (500,000/=) from account No. [particulars withheld] fixed deposit account held with NIC Bank Ltd, Karen Branch in the name of A N I to cater for the immediate medical expenses and care of the respondent.**

**(c) That the applicant/petitioner to file a statement of accounts in respect of the use and or expenditure of the said amount within three months.**

**(d) Mention on 5<sup>th</sup> November, 2017 to confirm compliance.**

Order accordingly.

DATED AND DELIVERED AT NAIROBI THIS 1<sup>ST</sup> DAY OF AUGUST, 2017.

**J.N. ONYIEGO (JUDGE)**

In the presence of:

..... Counsel for Applicant