



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**MILIMANI**

**FAMILY DIVISION**

**MISC APPL 150 OF 2015**

**IN THE MATTER OF THE MENTAL HEALTH ACT, CAP 248 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF**

**W B.....1<sup>ST</sup> SUBJECT**

**A M B.....2<sup>ND</sup> SUBJECT**

**BY**

**R A B.....1<sup>ST</sup> PETITIONER**

**S M B.....2<sup>ND</sup> PETITIONER**

**RULING**

The subject matter of this Ruling is an Amended Petition filed on 2<sup>nd</sup> March 2017 filed by the Petitioners who are the sons of W B and A M the subjects herein. They stated that they are the sons of the subjects who are aged 93 years and 89 years respectively, that they are unable to attend to their personal responsibilities since they are persons living and suffering from mental illness within the meaning of the Mental Health Act, Cap 248 Laws of Kenya and the said condition has affected their cognitive and intellectual abilities (**copies of the Subjects' medical reports were produced and marked RAB 1a and RAB 1b**). They submitted that the subjects' medical expenses have not been fully settled since they are not in a position to transact on their own and thus depend on them as their Children.

It was submitted that the Subjects have 7 children namely:

**I. R A B**

**II. C B M**

**III. J M O**

**IV. M B**

## V. S B

## VI. P B O

## VII. C B

It was submitted that only 2 of the Children reside in Kenya, being the Petitioners and were thus suitable to be appointed as guardians and managers of their Estate. The other Children; all of who are adults gave their consents to them being appointed as the guardians and managers of the Estate of the Subjects.

The Estate which is to be managed includes:

**I. KCB NYAMIRA BRANCH A/C NO***[particulars withheld]*

**II. KCB NYAMIRA BRANCH A/C NO***[particulars withheld]*

**III. L.R NO. WEST MUGIRANGO/SIAMANI** */[particulars withheld]*

**IV. L.R NO. WEST MUGIRANGO/SIAMANI***/[particulars withheld]*

**V. L.R NO. NORTH MUGIRANGO/BOISANGA** *[particulars withheld]*

**VI. NYANKONO SCHEME***/[particulars withheld]*

**VII. L.R NO. NORTH MUGIRANGO/BOISANGA***/[particulars withheld]*

They prayed that the Subjects W B and A M B be declared to be suffering from a mental disorder under the **Mental Health Act, Cap 248 Laws of Kenya**, that they be appointed as of the subjects and managers of their Estate.

### **ANALYSIS AND DETERMINATION**

According to the depositions, the Subjects herein were diagnosed with stroke which has affected their normal body functions and are in need of close care from other people thus filing of the present Petition.

The 1<sup>st</sup> Subject was suffered a major stroke which affected his cognitive functions and speech and the 2<sup>nd</sup> Subject suffered an ischemic stroke which resulted to several medical complications. According to a medical report by Prof. Erastus O Amayo dated 6<sup>th</sup> September 2015 regarding the 1<sup>st</sup> Subject, he explained that the Subject has been under his care since 2012 when he suffered a major stroke. He further explained,

***“...Pastor B speech and physical condition is improved; he nevertheless needs close observations and assistance to perform certain vital functions. His cognitive function and speech were severally affected to the extent that he cannot transact any business. ... He suffered a major debilitating stroke and is not capable of transacting any official business...”***

According to another Report by the same Medical Practitioner dated 18<sup>th</sup> September 2015, he explained that the 2<sup>nd</sup> Subject has been his patient since 2012 when she suffered an ischemic stroke. He further explained,

***“...the patient has had several complications as a result of the stroke including; recurrent generalized tonic clonic seizures, dysarthria, cognitive dysfunction and recurrent thromboembolism. All these have resulted in her totally dependent on others for her basic needs...”***

**The Mental Health Act, Cap 248** provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons. **Section 26** of the **Act** gives the Court powers to make orders for the management of the estate of such persons and for their guardianship by any near relatives or any suitable persons who are willing to take care of such persons.

**Section 26(3)** of the **Act** provides,

*“Whereupon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the Court may make such orders as it may think fit for the management of the estate of such persons, including proper provision for his maintenance...”*

From the averments by the Petitioners and the Medical Reports presented before this Court, it is clear that the Subjects are suffering from a medical condition contemplated under Section 26 of the Act. In of this fact which is not in dispute and the medical reports adduced in support of the same, this Court is satisfied that Petitioners have made out their case. Accordingly, this Court holds:-

**I. W B and A M B (the Subjects) are hereby declared to be suffering from a mental illness pursuant to section 26 of the Mental Health Act, Cap 248 Laws of Kenya.**

**II. R A B and S M B are hereby appointed as the guardians to W B and A M B and as managers of the estate of their Estate including 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 property or giving a right to receive any money or goods.**

**DELIVERED DATED AND SIGNED IN OPEN COURT ON THIS 30<sup>TH</sup> DAY OF OCTOBER, 2017.**

**M.W.MUIGAI**

**JUDGE**