



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
MISCELLANEOUS APPLICATION 136 OF 2017
IN THE MATTER OF SECTION 26, 28(1) AND 28(2) OF THE
MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA

AND

IN THE MATTER OF R. N. N. (A PERSON SUFFERING FROM MENTAL DISORDER)

AND

**IN THE MATTER OF AN APPLICATION BY G. T. W. TO BE APPOINTED GUARDIAN
OVER THE AFFAIRS AND MANAGER OF THE ESTATE OF R N N**

IN THE MATTER OF GUARDIANSHIP OF SUBJECT- R N N

G T WPETITIONER

RULING

The Applicant **G T W** son of the subject **R N N** has filed a Petition dated 3rd October, 2017 under Section 26, 27, 28, 29, 32, 33 and 38 of the Mental Health Act Chapter 248, Laws of Kenya and he sought that he be appointed legal guardian of **R N N** and manager of her estate.

The Petitioner is the biological son of **R N N** who is suffering from Dementia and currently being managed for severe dehydration with electrolyte imbalance (hypernatremia and hypokalemia) and whose rights are protected under the Mental Health Act Chapter 248 Law of Kenya.

The Petitioner state that the said **R N N** although being of the age of majority is incapable of reading, writing or speaking coherently and thus unable to manage her affairs.

The subject **R N N** suffers from mental incapacity that hinders decision making and conduct of her affairs and ensuring her wellbeing.

Grounds

- 1. The Petitioner has provided a medical report showing that the intended ward is incapable of communicating orally or in writing.**

2. The intended ward condition is irreversible

3. The said R N N has shares with Messrs Barclays Bank of Kenya Ltd which needs to be managed to avoid it being wasted.

Supporting Affidavit

1. THAT the said R N N is suffering from dementia which has rendered her incapable of running her affairs. Attached and marked “GTW” is a copy of a doctor’s letter.

2. THAT said R N N has shares with Messrs Barclays Bank of Kenya Ltd.

3. THAT she cannot and thus cannot run an account or transaction in shares as per the law requires.

4. THAT I therefore humbly petition to be appointed as the manager and guardian of her estate.

5. THAT I undertake to manage her estate faithfully and with accountability and as per the conditions that shall be set down by this Honourable Court.

The Applicant G T W presented the current medical report from Dr Joseph Mburu, RCO – Ngong Sub-country Hospital dated 25th August, 2017 who upon examination was diagnosed with

“dementia with dehydration severally because of poor feeding. She has had several admissions secondary to the same. She is currently bedridden and is undergoing supportive care. She is unable to do normal routine tasks”.

The other medical report was from Dr. Jamila Nambafu, Consultant Physician – Aga Khan University Hospital, dated 24th August, 2017 who confirmed the subject the subject was admitted in hospital on 22nd August, 2017 and upon examination was diagnosed with

“Dementia and currently being managed for severe Dehydration with electrolyte imbalance (Hypernatremia and Hypokalemia)”

The Applicant deposed that due to the subject's current medical status she is incapable of managing her affairs and she urgently requires funds to pay for her medical needs which funds is to be realized from the sale/transfer of shares held with Barclays Bank of Kenya.

The Applicant attached a written Consent to the Appointment of a Guardian obtained from members of the family; namely;

a) J W G ID. No [particulars withheld]

b) N M R ID. No [particulars withheld]

c) J M N G ID. No.[particulars withheld]

d) H N G ID. No.[particulars withheld]

d) E N G ID. No.[particulars withheld]

DETERMINATION

From the foregoing, the issue(s) that are to be determined by the Court are:-

1) Whether the Subject should be declared as suffering from mental disorder pursuant to the Mental Health Act, Cap 248.

2) Whether the Petitioner should be appointed as guardian to the Subject as well as manager of the estate of the Subject.

The Mental Health Act 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** grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.

Section 28 of the same Act provides for management of the subject's estate. The subject shall require funds to facilitate and ensure provision of medical care, nutrition, hygiene and upkeep. The Petitioners/Applicants will require to access funds from the subject's bank account Messrs Barclays Bank of Kenya for the purpose of maintaining the subject to the best possible medical condition.

Under Section 26(3) of the Act it 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 evidence produced by the Petitioner, the Medical Report on record, it is not disputed that the Subject is suffering from a mental disorder; a medical condition contemplated under Section 26 of the Mental Health Act.

DISPOSITION:

In light of the above, the Court holds that:-

- 1) R N N (the Subject) is hereby declared to be suffering from mental disorder pursuant to Section 26 of the Mental Health Act, Cap 248 Laws of Kenya.**
- 2) G T W is hereby appointed the legal guardians to R N N.**
- 3) G T W is hereby appointed manager of the estate of R N N under Section 28 of Mental Health Act to manage her 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.**
- 4) G T W to access funds from the subject's bank Messrs Barclays Bank of Kenya Limited.**

DELIVERED DATED SIGNED IN OPEN COURT IN NAIROBI ON 27TH NOVEMBER, 2017.

M.W. MUIGAI

JUDGE