



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
MISCELLANEOUS APPLICATION 157 OF 2017
IN THE MATTER OF SECTION 26 AND 28 OF THE MENTAL HEALTH ACT 248,
OF LAWS OF KENYA
AND
IN THE MATTER OF M. W. M. (A PERSON SUFFERING FROM MENTAL DISORDER)
AND
IN THE MATTER OF AN APPLICATION BY F. W. M. AND J. W. N. TO BE APPOINTED
GUARDIAN OVER THE AFFAIRS AND MANAGER OF THE ESTATE OF M. W. W.
IN THE MATTER OF GUARDIANSHIP OF SUBJECT- M. W. W.

FWW1ST PETITIONER

JWN2ND PETITIONER

RULING

The Applicants **FWW** and **JWN** are a daughter and sister respectively of the subject **MWW** filed a Petition dated 14th November, 2017 under Section 26 and 28 of the Mental Health Act Chapter 248, Laws of Kenya and they sought that they be appointed legal guardian of **MWW** and manager of her estate.

The Petitioners are a daughter and a sister respectively of **MWW**, a female adult aged 69 years (herein after called “the patient”)

The patient has been suffering from a series of chronic ailments which have resulted in neurodegenerative disorder generally know dementia.

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

SUPPORTING AFFIDAVIT

1. THAT the said patient is the first wife of one **JRW** who she married in a Church wedding at the then St. Stephen Anglican Church, Donholm Road in Nairobi in 1967 (annexed hereto and marked

“A1” is a photocopy of their marriage certificate).

2. **THAT** their marriage was blessed with only one child, namely; **FWW**, who is the First Petitioner herein

3. **THAT** the patient and her said husband lived a harmonious and happy married life until her husband engaged himself in an illicit intimate relationship with another woman called **VWW** and for the last Ten (10) years or so the patient and her husband have not been living together.

4. **THAT** the patient is suffering from a series of chronic ailments related to depression, which have resulted in a neurodegenerative disorder and as a result she has become forgetful and has occasional loss of memory, confusion and poor judgement and she cannot make logical decisions. She is on treatment for the said problem (**annexed hereto and marked “A2” is a photocopy of her medical report confirming the same**).

5. **THAT** the patient has been sued by her husband through her Co-wife the said **VWW**, in **ELC 640 OF 2017** in Thika over a certain property which had been transferred to by her husband but which is being contested by her Co-wife (**annexed hereto and marked “A3” are photocopies of the pleadings in the said suit**).

Dr. D. Njuguna Gachiro upon examination MW was diagnosed with;

“senile dementia with complaints of noted one sided weakness (left) and lower urinary symptoms. She currently cannot communicate and requires constant home based nursing care and physiotherapy”.

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 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. MWW (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. FWW and JWN are hereby appointed the legal guardians to MWW.**
- 3. FWW and JWN are hereby appointed Managers of the estate of MWW 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. The legal guardians shall represent the patient in Court proceedings.**

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

M.W. MUIGAI

JUDGE

IN THE PRESENCE OF;

Kimani holding brief Mr. Ngugi for Appellant.