



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISCELLANEOUS APPLICATION 144 OF 2017

IN THE MATTER OF SECTION 26(1)(A) & (B) AND 28 AND 29 OF THE MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA

AND

IN THE MATTER OF C K S M ALIAS C K S (A PERSON SUFFERING FROM MENTAL DISORDER)

IN THE MATTER OF GUARDIANSHIP OF SUBJECT- C K S M

B S C 1ST PETITIONER

S S M C.....2ND PETITIONER

RULING

The Applicants **B S C** and **S S M C** are a son and daughter respectively of the subject **C K S M** filed petition under Section 26(1)(a) and (b), 28 and 29 of the Mental Health Act Cap 248 and they sought that they be appointed legal guardian of **C K S M** alias **C K S** and manager of her estate.

The subject **C K S M** suffers from mental incapacity that hinders decision making and conduct of her affairs and ensuring her wellbeing.

The Petitioners are only the son and daughter respectively of **C K S M** alias **C K S** (“K”) having been born to the said **K** and the late **S M C** in 1962 and 1967 respectively.

The Petitioners’ father and the husband to **K** passed away on 1st September, 2017.

Prior to his death her husband the late **S M C** was solely responsible for taking care of her through family assets and bank accounts which were jointly registered.

K suffered a severe subarachnoid hemorrhage on 23rd April, 2012, complicated by a cardio respiratory arrest which she was evacuated to South Africa for further management. Her neurological recovery has been minimal with several neurological and cognitive impairment with no significant change over the past five years. Her doctor’s assessment is that she is not able to make any administrative decision related to herself or her family estate.

She is undergoing treatment and requires upkeep and the Petitioners are unable to pay for the costs of

treatment and upkeep as the family assets and estate is now fully vested in her and cannot be used for these purpose due to her inability to deal with.

The Applicants presented medical report dated 22nd September, 2017 from Dr M. M. Qureshi Consultant Neurosurgeon from Aga Khan Hospital who confirmed the subject upon examination was diagnosed with:

“She sustained a severe subarachnoid haemorrhage on 23rd April, 2012, complicated by a cardio-respiratory arrest from which she was revived”.

The Applicants presented medical report dated 12th September, 2017 from Dr Hemant Saha Specialist in Internal Medicine from Aga Khan Hospital who confirmed the subject upon examination was diagnosed with:

“She has severe neurological deficits with severe cognitive impairment and unable to look after even her basic needs. She has evidence of severe brain injury with paralysis and speech impairment both sensory + motor. There has been no improvement in her condition during the last 5 years. Her prognosis remains guarded with an unlikely restoration in cognitive functions”.

The rightful heirs to his estate; namely;

(a) **K S M C Widow 76 years**

(b) **B S C Son 55 years**

(c) **S S M C Daughter 50 years**

SUPPORTING AFFIDAVIT

1. That prior to his death her husband the late S M C was solely responsible for taking care of her through family assets and bank accounts which were jointly registered. The list of her assets/estate are as follows:-

A. Bank Account No. Bank Branch

1. [particulars withheld] **Bank of India Westlands-Oval**

2. [particulars withheld] **Bank of India Westlands-Oval**

3. [particulars withheld] **Bank of India Westlands-Oval**

4. [particulars withheld] **Bank of India Westlands-Oval**

5. [particulars withheld] **I & M Bank Eldama Park**

6. [particulars withheld] **(FDR)Bank of India Westlands-Oval**

7. [particulars withheld] **(FDR) Bank of India Westlands-Oval**

8. [particulars withheld] **(FDR)I & M Bank Eldama Park**

B. CARS

1. KAS [particulars withheld]

2. KAN [particulars withheld]

3. KAY [particulars withheld]

C. RESIDENTIAL HOUSE

L.R No.[particulars withheld] (RIVERSIDE PADDOCKS)

2. That furthermore the family residence where she resides was registered in her name and her late husband as “joint tenants” which means that she is currently the sole owner of the property and without due care and management of the said estate is prone to waste. We annex Bank confirmation, Motor Vehicle logbooks and a copy of the title in a bundle marked as “BSC4”

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.

Relying of the Medical Report from Nairobi Women Hospital dated 9th April 2017 the Court is satisfied that the Petitioners have made out their case in support of the Petition that the subject suffers mental incapacity and requires care and attention for her well being.

DISPOSITION:

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

1. C K S M (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. B S C and S S M C are hereby appointed the legal guardians to C K S.

3. B S C and S S M C are hereby appointed managers of the estate of C K S M 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. B S C and S S M C to access funds from the subject's bank

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

M.W. MUIGAI

JUDGE

IN THE PRESENCE OF;

Mwule holding brief Michuki for Petitioner.