



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PETITION 128 OF 2016
IN THE MATTER OF THE MENTAL HEALTH ACT (CAP 248) LAWS OF KENYA
AND
IN THE MATTER OF DKW
BETWEEN
MWW..... PETITIONER
AND
MARGARET WAKONYO NJOGU INTERESTED PARTY
RULING

1. The Interested party has filed the application dated the 1st December 2017 seeking temporary orders as follows;

i. To restrain or prohibit the petitioner by himself or his agents servants or any person claiming through him from unlawfully taking custody of the patient DKW or dispossessing custody of the patient from the Interested party or in any manner interfering with the Interested party's guardian rights over the patient and or smooth management of his welfare pending the hearing and determination of the suit.

ii. To restrain or prohibit from dispossessing the custody of the patient DKW from the Interested party during the admission at the Nairobi Hospital or any other medical institution or any other forum or demanding release of the patient to him by the hospital administrator or from misrepresenting as the custodians or guardian pending the hearing and determination of the suit.

2. The application is supported by the affidavit of the interested party dated the 1st December 2017.

3. The petitioner too has filed an application dated the 18th December 2017. He seeks orders that pending the hearing and determination of the main petition an order be made appointing him as the guardian of the patient and as such be granted custody of the patient. This application is supported by the Petitioner's affidavit dated the 15th December 2017.

4. After reading the said affidavits and hearing the oral submissions by Counsels the issue in contention is who should have custody of the patient. The main petition that was filed by the petitioner seeking to be appointed the patient's guardian has not been heard. The 2 applications were filed after the court ordered

that the patient be admitted for medical evaluation as per the medical report of Doctor Kigamwa. The patient was admitted at Nairobi hospital but the parties have some differences between them.

5. The issue of guardian is an issue to be determined at the hearing of the petition. The court has already given directions on the same. The Interested party's argument is that she is the wife of the patient and has stayed with him for about 10 years that she has a right to have custody of the patient as she has been able all along to care for him. She has not neglected the patient. That the condition the patient is suffering from is an infection of the genitalias which is mainly associated with diabetes and immunodeficiency condition. That the doctors diagnosed the infection Fournier's gangrene and surgery was undertaken. That since admission the patient as shown significant health improvement and is likely to be discharged from the hospital soon for management on an out of patient basis. That she is best suited to continue having the custody of her husband. That she has no intentions of preventing the petitioner and his siblings from seeing their father.

6. The petitioner on the other hand argues that the patient was admitted on the 2nd of December 2017 under different circumstances from what was ordered by the court. That the patient was admitted to undergo surgery to treat bed sores with gangrene infected tissue which was obtained due to neglect and provision of poor nursing care by the interested party. That the patient is still admitted in hospital almost two weeks since his admission and this is indicative that his health has significantly deteriorated prior to the admission and he shall require escalated medical and nursing care upon his discharge. That the Interested party was aware before the court ordered for the patient's admission that Doctor Nang'ole Wanjala had recommended the patient's urgent admission. That the Interested party lacks the requisite willingness to put the patient's interest at heart and accord him the necessary care she also lacks the capacity to do. That she admitted to having financial difficulties in meeting the health care expenses of the patient in her application dated the 9th of June 2017. That the over-arching interest that the court should consider is the patient's health and well-being. That he has the requisite capacity and he has demonstrated his willingness and capability to put the patient's health well-being and best interests at heart and to provide him with world class health care that he may require.

7. I have considered the affidavits filed and the oral arguments. What I have to decide in this Ruling is who should have custody of the patient upon his discharge from hospital. The court ordered for his admission upon hearing the concerns of the petitioner about the health of his father. The Interested party has deposed that the patient is her husband a fact the petitioner dispute. The petitioner is the patient's son. The petitioner argues that the interested party cannot continue to take care of his father as his father's health is deteriorating whilst with her. The Interested party on the other hand claims that she is doing her best in caring of the patient.

8. From the affidavits deposed it is quite obvious that the parties do not agree. Am now faced with the difficult task of making a decision on who should have custody of the patient pending the hearing of the petition. The petitioner has alleged negligence on the part of the interested party which she denies. The patient upon discharge must be taken care of. To help me make a decision on who should have custody I have carefully read the findings of each doctor. The patient was examined by three doctors. Dr. Were's report is dated the 19th of December 2017. According to him the patient has been under his care since 2015. His observation is that Duncan the patient requires round the clock assistance at home due to dementia. That he has good handlers and maintains good blood sugar and blood pressure control at home. That he recently developed sores on the heels. That he is currently admitted due to a perianal and scrotal ulcers and that this has required a colostomy to enable the perianal ulcers to heal. That his comorbidities of diabetes, mellitus, hypertension dementia and chronic renal disease remains controlled and in stable state. That they hope to reverse the colostomy once good healing of the wounds is achieved and that he then returns home to continue with the excellent care he is getting from his wife MK and other health providers. Doctor Nang'ole Wanjala in his report states that he had seen Duncan on the 28th of November 2017 and recommended his admission. That the patient was presented with 3-day history of multiple wounds in the perianal region and wounds on the left heel. On examination he was found to have multiple abscesses in the perianal region with pus. Surgical debridement was done on 4th of December 2017. That the infection was noted to involve the entire perianal region and a diagnosis of Fournier's

gangrene was made. That the patient has shown improvement and will continue with in patient management till he stabilizes and that he is likely to be discharged soon for management as an out-patient basis. Doctor Kigamwa states that the patient was admitted to the Nairobi Hospital under the care of Dr. Nangole plastic and reconstructive surgery having presented with multiple gluteal (buttocks) ulcers and suspected abscess and Fournier's gangrene. That he also had been sores of the feet due to pressure from lack turning. That the patient has continued to receive treatment for delirium on dementia, diabetes mellitus and hypertension. That the patient physical condition has improved and he could be discharged. That his cognitive state remains challenging as verbal communication is almost absent. That he remains completely dependent on nursing staff for all his activities of daily living.

9. The petitioner alleges negligence on the part of the interested party. The three medical reports indicate the patient's current condition. None of the reports attribute negligence on the part of the care giver. it is only Dr. Kigamwa who states that the bed sore of the feet is due to pressure from lack of turning. The patient has been with the interested party for some time now. The condition that is being treated has not been indicated by the doctors as being a recurrent one or one that was there before, it appears to be a recent condition. As a court it is the best interest of the patient that is paramount. For now, it is my view that the patient remains in the custody of the interested party pending the hearing of the petition. However, I caution the interested party that she must allow access to the patient as earlier ordered by court. During the visits parties shall restrain from any kind of confrontation. Costs shall be in the cause.

Dated signed and delivered this 22nd Day of December 2017.

R.E. OUGO

JUDGE

In the presence of;

Mr. Muchiri

For the Petitioner

Mr. Mahinda

For the Interested Party

M/s Charity

Court Clerk