



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
MISC APPLICATION NO. 13 OF 2016
IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248
AND
IN THE MATTER OF CIVIL PROCEDURE RULES 2010
IN THE MATTER OF M G J AILING AND OF UNSOUND MIND
AND
IN THE MATTER OF AN APPLICATION TO RECEIVE PROPERTY OF A PERSON OF
UN SOUND MIND

A K J.....1st APPLICANT

VERSUS

A M J.....2nd APPLICANT

RULING

1. The two applicants have applied to become guardians of M G J (hereinafter referred as the subject), who they state has a mental illness. According to them the mental illness has affected him to the extent that he cannot manage his affairs.
2. The applicants have brought the application through a notice of motion under section 3A Civil Procedure Act (Cap 21) Laws of Kenya and under all enabling provisions of the law including the Mental Health Act (Cap 248) laws of Kenya.
3. A K J the co-applicant in his affidavit has stated that the subject of this application is their brother who is mentally unsound and incapable of caring for himself. According to him his brother was diagnosed with a degenerative psychiatric disorder in 1996 and has been attending treatment for psychosis since then.
4. It is his his further evidence that he has been providing the necessary nutrition, medical and the housing needs of his brother. It is also his evidence the subject was an employee of the now defunct Municipal Council of Embu prior to his illness. He had opened a bank account with Kenya Commercial Bank. It is this bank account that his brother applicants would like to have access in order to get money for the support of their ailing brother.

5. Finally, the applicant has exhibited a letter marked annex "AJ 3" from the chief who has supported their application that they be appointed as guardians.

6. The applicant has also attached a medical report from Dr Thuo, a consultant psychiatrist from Embu Level 5 hospital. According to that report, the subject is affected by hallucinations. The doctor also stated that the subject is not oriented on time and place. He has further stated that his concentration is poor and he also lacks foresight. The doctor concluded that the subject suffers from a chronic mental illness and that he requires the assistance of his next of kin to manage his personal, financial and legal affairs.

7. I have evaluated the affidavit evidence and I find that the subject suffers from a chronic mental illness to the extent that he cannot manage his person and his affairs. I also find that he was discharged from the employment of Embu Municipal Council for that reason.

8. I therefore find that this is a proper and fit case to which the management of the subject should be placed in the hands of his two brothers as guardians. In accordance with the provisions of the law, I hereby direct that the two brothers and the Deputy Registrar of this court to be co-signatories to the account of the subject at the Kenya Commercial Bank.

9. The application of the applicant is therefore allowed in terms of prayers 2 and 3 of the notice of motion.

10. There will be no order as to costs.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 29th day of February 2016

In the presence of Mr Abubakar holding brief for Mr. R. M. Mugo for the Applicant.

Court clerk Njue

J.M. BWONWONGA

JUDGE

29.02.16