



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

FAMILY DIVISION

MISC APPLICATION 183 OF 2015

**IN THE MATTER OF A PETITION FOR THE APPOINTMENT OF A GUARDIAN AND
MANAGER FOR M N J AND HER ESTATE**

IN THE MATTER OF SECTION 26 AND 28 OF THE MENTAL HEALTH ACT CAP. 284

MARYANNE NYAMBURA MUNDI..... APPLICANT

M N J..... RESPONDENT

RULING

By an application under certificate of urgency, the Petitioner, Maryanne Nyambura Mundia filed a petition on the 16th of December 2015 seeking the following orders,

- (i) That the Respondent be adjudicated as suffering from mental illness
- (ii) That the Petitioner be granted custody and management over the estate of the Respondent
- (iii) That the Petitioner be granted guardianship of the Patient
- (iv) The Petitioner be appointed as the manager of the patient's estate

The Applicant Maryanne Nyambura Mundia is a friend to the patient or the Respondent in this matter M N J, she holds a Power of Attorney executed by the Respondent dated 15th July 2010. She has maintained and managed the Respondent's property and her accounts according to the Power of Attorney.

The Respondent M N J who is the patient in this matter was diagnosed by Dr. Stanley M. Ngare Consultant Physician at Kenyatta National Hospital vide the medical reports filed in Court. He diagnosed the patient with worsening dementia, hypostatic pneumonia and pressure sores and ulcers. After release from admission in hospital from January 2015 to February 2015, the Doctor reviewed her and found the patient has had a progressive decline in her mental health function over the years. Her condition follows a downhill path and recovery is not expected, but worsening of her mental and physical condition.

The patient requires proper care round the clock nursing care, physiotherapy nutrition review, constant medical care and treatment. This care attracts increased financial cost and expenses.

On the hearing date, the 24th of March 2016 the Applicant Maryanne Nyambura Mundia was present, the patient M N J was also present and the patient's two brothers Steven Nyagah and Solomon Kamau and 1

other brother David Mbuguss sent an email consenting to appointment of legal guardian and manager of the patient's estate.

The Applicant produced in court the General Power of Attorney dated 15th July 2010 that she used to act for and on behalf of the patient, the Respondent. She would like to be granted guardianship over the patient and to also be appointed manager of her estate in order to look after her and to care for her finances. The two brothers present in court were not opposed to the application. The other two David Wambugu Muikia and George Chakiris Muikia wrote an email and a letter respectively stating that they had no objection to the Applicant being appointed as guardian of the patient and manager of her estate.

The Applicant disclosed to this Court that with the Power of Attorney she maintained and managed her estate as shown in the accounts attached marked **MNM1**. The applicant supported the patient with provision of basic needs and care including medication and the costs continue to escalate and funds available are depleted. The patient's home is in a state of disrepair.

The patient is a majority shareholder of Carlisle Company Limited, which is desirous to engage in a joint venture Agreement with Mashin Construction Limited with the objective of constructing a residential commercial block, and the patient's execution of the relevant documents is urgently required to enable the Company to proceed with construction. Counsel for the Applicant and patient intimated to Court that the transaction would facilitate availability of sufficient funds for the patient's medical care, upkeep and well being.

Section 26 of The Mental Health Act Cap 248 provides;

(1)The Court may make orders

“(a)For the management of any person suffering from mental disorder; and

(b)For the guardianship of any person suffering from mental disorder by any near relative or by any other

(2)Where there is no known relative or suitable person the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person

(3)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 person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not in such case, make any order as to the custody of the person suffering from mental disorder”

After careful examination of the evidence brought before this court it is clear that the Respondent suffers from mental disorder specifically dementia.

The Applicant seeks to be appointed as her legal guardian and the manager of her estate. The Applicant is not in any way related to the Respondent and only a friendship subsists between them.

According to **the Mental Health Act Cap 248**

Section 28

- 1. The court may, upon application made to it by petition concerning any matter connected with a person suffering from mental disorder or with his estate, make such order, subject to this Part, regarding such application as, in the circumstances*

of the case, the court may think fit''

The Applicant has not provided this court with sufficient evidence to prove that she is the most suitable candidate fit to care for the patient. The power of attorney that was agreed upon in 2010 does not suffice.

The Applicant had also requested to be appointed as the manager of the patient's estate. The Patient holds a majority of the shares in the Carlisle Court Limited; however a full disclosure of the patient's estate has not been presented to court. The patient as a person suffering from mental illness is a ward of the state and needs to be protected from both her guardians and her family, not due to any suspicion that may be had but due to the fact that she is unable to care and protect herself on her own and ensure that all is done in her best interests.

COURT ORDERS

After the careful examination of the case and the evidence brought before me this court Orders that,

1. The Respondent, the patient in this matter is adjudicated, as suffering from mental illness as evidenced by the doctor's report and the fact that she was present in Court with a nursing Aid.
2. The Applicant and family members shall disclose all assets and liabilities of the patient to this Court within 60 days.
3. In the meantime the Court appoints the Applicant MaryAnne Nyambura Mundia, Stephen Nyagah and David Wambugu Muikia legal guardians of the patient.
4. The Court appoints MaryAnne Nyambura Mundia, Stephen Nyagah and David Wambugu Muikia managers of the patient's estate.
5. The Applicant to facilitate Valuation report of the suit property subject of the joint venture and what sums or benefits are due to the patient within 60 days.

READ AND DELIVERED IN OPEN COURT AT NAIROBI THIS 31ST DAY OF MARCH, 2016

MARGARET W. MUIGAI

JUDGE

In the presence of;

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