



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION

MISC. APPLICATION NO. 135 OF 2015 "B"

IN THE MATTER OF MENTAL HEALTH ACT CAP 248

A S M.....1st APPLICANT

B L K.....2nd APPLICANT

E I M.....PATIENT

RULING

By an Application filed on the 14th of September 2015 brought under **Section 26 (1), 27, 28 and 29 of the Mental Health Act Cap 248**, the Applicants sought;

- a. The Applicants to be appointed legal guardians of the patient, E I M;
- b. The Applicants A S M and B L K be granted powers and authority to manage the patient's estate
- c. The court issue orders concerning the care and guardianship of the patient's son E M.

E I M is a Congolese national and Kenyan resident who worked for *[particulars withheld]* Logistics until the time she fell ill. She and her family reside in Kilimani, Nairobi. The Applicants, parents to the Subject, E M stated that she is incapacitated following major neurological injury in 2013 and requires constant care and attention. She became neurologically non responsive after she had an emergency caesarian section and subsequently developed various complications.

During the hearing on 10th March 2016, the 1st Applicant and 2nd Applicant parents to the subject were both present accompanied by the Subject's brother G M and her infant son E M who is now aged 2 ½ years old. The Subject's brother had no objection to the Application. The Subject is not admitted in hospital and currently resides with the Applicants who care for her at home.

The Applicants presented evidence of E I's medical condition through medical letters from the Aga Khan Hospital.

- a. Dr. Said Salim Ahmed's report dated 24th September 2013 outlines in detail the diagnosis of the patient /subject and attendant doctors from Aga Khan Hospital
- b. The Dr. P. Mativo's report of 15th June 2015 shows the subject as being in a vegetative state following delivery complications. She is dependent in all activities of daily living. She will

continue with medication, physiotherapy and nursing care for life

c. Prof. Erastus Amayo's report of 14th July 2015 stated the patient's present and future status and progress;

'E had an emergency caesarian section at 34 weeks due to preeclampsia. She subsequently developed acute Kidney Injury which she recovered from. She had respiratory arrest and was intubated with mechanical respiration. She subsequently developed diabetes ketoacidosis and sepsis. She remained neurologically down. E has suffered a major neurological injury. She will remain dependent on others for the rest of her life.'

The Applicants confirm that the patient/ subject has been under constant care and attention due to her medical condition.

With regard to financial circumstances; the patient's medical care is expensive and they have incurred high costs and huge debts. The Applicants attached the outstanding hospital bill, home nursing care bill, physiotherapy costs, the patients hospital appointment bills and subsistence costs; rent food, water and electricity bills.

Therefore they seek to be appointed managers of her estate as to access funds and defray the escalating costs and also continue to cater for her medical care and wellbeing and bringing up her child. The Applicants are Congolese nationals who joined the patient in the country as her primary care givers.

Section 26 (1) of the Mental Health Act Cap 248 provides,

The court may make orders

a. for the management of the estate of any person suffering from mental health disorder

b. for the guardianship of any person suffering from mental disorder by any near relative or any other suitable person.

This Court finds the Applicants who are parents of the patient have been taking care of her since the onset of the debilitating condition and have also taken care of her son. Her brother consents to Applicants being appointed her legal guardians. The medical reports confirm that she will be in need of constant care

and attention. In the absence of any evidence against the Applicants capability and commitment, this Court appoints them legal guardians of the patient.

Section 27 (1) of Mental Health Act provides

'Where a manager is appointed under this part the court may order that the manager shall have general or special powers for the management of the estate as the court considers necessary and proper regard being had to the nature of the property whether movable or immovable of which the estate may consist.'

The applicants attached the patient's employment documents and corresponding medical care costs that continue to escalate. The patient cannot in her medical state conduct business affairs. She is dependent on her family for care and support. Since the Applicants are legal guardians of the patient they will require funds to ensure the patient's medical care and wellbeing. Therefore, they are appointed managers of her estate to provide her with constant care and attention.

E M is the son to the patient E I M. He was born in Nairobi on the 17th of July 2013. He has been in his grandparents care since birth when his mother, the patient fell ill. He is 2 ½ years now and knows no other family save for the Applicants who brought him up. The Court saw the child with the family members and is a healthy, vibrant and happy boy oblivious and innocent of what happened. The

Applicants sought to be appointed guardians of the child who is their grandson.

Section 105 of the Children’s Act 2001 provides

‘In addition to the powers of the court to appoint a guardian under subsection (5) of Section 104 the court may appoint a guardian in the following circumstances,

a. On application of any individual where the child’s parents are no longer living or cannot be found and the child has no guardian and no other person personally responsible for him. ‘

This Court finds the Applicants most appropriate to be joint guardians of their grandson as he will also access his mother, the patient when she gets better in future. The child knows no other family, therefore under the above cited legal provision the Applicants shall be guardians to the child.

COURT ORDERS

- 1. A S M and B L K are appointed legal guardians of E I M under section 26 of the Mental Health Act Cap 248.**
- 2. A S M and B L K are appointed managers of E I M’s estate under section 27 of the Mental Health Act Cap 248. They shall access her bank accounts, pursue her employment and other benefits to defray medical costs and care for the patient.**
- 3. A S M and B L K are appointed joint guardians of E I M’s son E M under Section 105 of the Children Act 2001**

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF MARCH, 2016

M. MUIGAI

JUDGE

In the presence of:

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