



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

IN THE MATTER OF THE MENTAL HEALTH ACT, CAP 248

CIVIL APPEAL NO. 2 OF 2014, SECTIONS 17(1) (4), 19, 20, 22, 28, 30, 31 AND 42(1) (2)

AND

**IN THE MATTER OF PETITION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE
OF ESTATE OF M F S (NOW INCAPACITATED)**

MISCELLANEOUS APPLICATION CAUSE NO. 40 OF 2016

JUDGEMENT

1. The undated petition filed herein on 30th March 2016 seeks three principal orders:-

- (a) That the applicant, R M, be appointed as the personal representative of M F S, hereinafter referred to as the patient;
- (b) That leave be granted to the applicant to access the bank account of the patient, being number [particulars withheld] Habib Bank-Zurich, Koinange Street, Nairobi, for the purpose of meeting the patient's medical needs; and
- (c) That the appointment in (a) above be for the limited purpose of the applicant accessing the bank account for payment of the patient's daily medication.

2. The affidavit in support of the petition was sworn by the applicant on 30th March 2016. She is the biological daughter of the patient. Her mother and siblings have consented to the applicant bringing the instant proceedings. She explains that the patient fell ill and suffered a stroke on 6th January 2016, which saw him admitted at the Ladnan Hospital. He was discharged home on 29th January 2016. He had not fully recovered at his discharge for he is still bedridden, immobile and unable to talk or see. He undergoes nursing care and physiotherapy treatment daily at home. The cost of the daily care is for the time being from the resources of the immediate family, who have so far spent in excess of the Kshs. 1, 200, 000.00. These resources are running out, hence the urgent need to have access to the patient's bank account.

3. The applicant has attached a number of annexures to her affidavit to provide a background to her case. She has attached her identity card and that of her mother, as well as her certificate of birth as proof that she is a child of the patient. She has also lodged in the cause a document dated 30th March 2016 headed 'Authority to Plead', duly signed by her mother and six of her siblings. There is also a letter of introduction from the Chief of Kibera Location, dated 22nd March 2016.

4. Attached too are documents from Ladnan Hospital evidencing the admission on 6th January 2016 and discharge on 29th January 2016 for home nursing. A letter from Dr. Nicola A. Okech, a consultant physician from the Ladnan Hospital, dated 8th March 2016, indicates that the patient had suffered a massive stroke which had left him incapacitated and completely dependent.

5. There is a more detailed medical report by the said Dr Okech, dated 11th April 2016 and written on the letterhead of AfyaKEN Partners Limited. It states that the patient had been admitted at the hospital's high dependency unit (HDU) and presented complaints of headache, right-sided weakness, dizziness, vomiting, confusion and inability to talk. He was treated for an acute large ischemic stroke and was discharged on 29th January 2016 with an artificial airway, a nasogastric feeding tube and medication. He is said to be severely limited in functional capacity being unable to speak, ambulate independently, feed himself or attend to his self and personal care needs. He is said to require 24 hour nursing care at home. The doctor opines that he is likely to remain in that condition for the next 6 months and recovery is expected to be slow.

6. The Mental Health Act, Cap 248, Laws of Kenya, is the law relating to the care of persons who are suffering from mental disorder or subnormality, for custody of such persons and the management of their estates. Part XII of the Act deals with the judicial power over such persons and their estates. Section 26 of the Act specifically provides for orders for custody, management and guardianship of such persons and their estates.

7. The petition before me is poorly drafted, but I understand it to be asking me to make an appointment of a guardian for the patient, as well as a manager for his estate. From the material before it is clear that the patient is no longer able to manage himself and his affairs on account of mental disorder arising from the stroke that he suffered sometime in January 2016.

8. I am satisfied that a case has been made out for the appointment of the petitioner, R M, as manager of the estate of the patient, who I have found to be suffering from mental disorder, and as guardian of the said person.

9. Such appointment places the property of the patient in the hands of another. This puts the petitioner in a fiduciary position so far as the patient and his estate is concerned. The petitioner is therefore bound to account to both the court and the patient, should he recover and require such account, for her handling of the said estate.

10. The orders that I feel bound to make in the circumstances are:-

(a) That the patient, M F S, is hereby adjudged to be a person suffering from mental disorder;

(b) That the petitioner herein, R M, is hereby appointed guardian of the said patient;

(c) That the said petitioner is hereby appointed manager of the estate of the patient;

(d) That the appointment in (c) above shall entitle the petitioner to access the patient's bank account number [particulars withheld] Habib Bank-Zurich, Koinange Street, Nairobi;

(e) That the funds held in the account referred to in (d) above shall be utilized solely for purpose of the patient's medical care; and

(f) That the petitioner shall place before court, at the expiry of three (3) months from date hereof, a full and accurate account of her handling of the estate of the patient.

11. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 17TH DAY OF MAY, 2016.

W. MUSYOKA

JUDGE