



**REPUBLIC OF KENYA**

**IN THE HIGH COURT FAMILY DIVISION**

**MISC. APPLICATION NO. 175 OF 2015**

**IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 SECTION 26 AND 27**

**AND**

**IN THE MATTER OF THE CIVIL PROCEDURE RULES, ORDER 32 RULE 1, 2, 3 AND 15**

**AND**

**I W M.....PETITIONER**

**VERSUS**

**M W G.....RESPONDENT**

**RULING**

**INTRODUCTION**

The Petitioner I W M filed a petition on the 23<sup>rd</sup> of November 2015 seeking the following orders;

- a) That the Respondent, M w G be adjudicated as suffering from mental incapacity
- b) That the Petitioner I W M be appointed guardian *ad litem* of the Respondent M w G
- c) That the Petitioner be appointed manager of the patient's estate and authorized to administer the finances, properties of the patient including his financial obligations.

The matter was heard on the 21<sup>st</sup> of April 2016 in Chambers. The parties present included; Dr. Khaminwa who represented the patient, the patient; M w G; the Petitioner I W M the patient's wife and the patient's nephew; F W G. The parties are both Kenyans and have 3 children together; L M, W M and A M who reside in US but they signed consents to this application.

The patient has PHD in History from New York University and has in various Universities in this country and abroad. He moved to the United States of America in 1961 to further his education and his wife joined him in 1968 during which they were married in February 1969.

They lived together until 1975 when her husband the patient obtained his doctorate and she worked for the National Council of Churches New York. They then moved back to Kenya where the patient was employed by the University of Nairobi. It was also during this time that they had had their first two children A W M born in 1969 and A I M born in 1970.

They moved to Baraton University in Eldoret until September where they lived and worked until September 2011. Their two eldest children moved back to the United States. Both the Petitioner and the patient retired in 2011 and settled in Miller Estate in Nairobi West registered in the mortgage under the patient's name and continues to service the facility.

In 2014 the Respondent began showing symptoms of dementia, he did not know his surroundings and at times he lost track of time and location.

## **HEARING**

During the hearing in Chambers the Petitioner stated she and the Respondent went to the USA to visit their children and the trip went well. They both came back to Kenya only for the Respondent to go missing. They had a search party sent out to look for him but they were later contacted by the Kenyan Consulate in New York and informed that he had travelled there. The New York Police Department had found him wandering around in New Jersey and took him in to Mount Sinai Roosevelt for medical examination.

The Petitioner reiterated that she will be turning 69 years old this year. She married the Respondent when they were young Their children currently reside in the United States of America, she lives with the Respondent in Karen and her nephew F occasionally visits to give a helping hand. The Petitioner has taken care of the Respondent for so many years; she needs full access to his bank account in order to retrieve the funds needed to care for him and to care for his financial obligations. The Children have provided their written consents to this application.

On medical grounds, the patient is confirmed to suffer from mental health. Dr. S.N.K Waweru wrote a medical report on the Respondent's health and stated,

***“The above referred (Prof. M w G) has been under my care since June 2015***

***The main medical problems are:***

- ***Type II Diabetes Mellitus***
- ***Bladder outflow obstruction due to enlarged prostate***
- ***Senile Dementia***

***Due to the Senile Dementia, he has become forgetful and has to be reminded to do basic things including those related to self hygiene and taking medication.***

***He therefore needs regular assistance on a daily basis.”***

The Patient Discharge Instructions from the Mount Sinai Roosevelt Sinai recommended the patient should follow up with doctors in Kenya and get an MRI as an outpatient. They also stated that the patient had a medical history of Dementia.

## **LAW**

The **Mental Health Act 248** provides for those suffering from mental illness, their estate and general wellbeing through the following provisions;

### ***26. Order for custody, management and guardianship***

**(1) The court may make orders—**

***(a) for the management of the estate 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 suitable person.**

### **27. Power of manager in respect of estate**

**(1) Where a manager is appointed under this Part, the court may order that the manager shall have such 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:**

**Provided that—**

**(ii) no manager may invest any funds belonging to the estate of which he is manager in any company or undertaking in which he himself has an interest, nor on the purchase of immovable property under the authority of paragraph (d) of section 4(1) of the Trustee Act without the prior consent of the court.**

### **DETERMINATION**

Going by the evidence that has been presented to this court and pleadings filed, it is clear that the Petitioner has been a constant companion and faithful longstanding wife to the Respondent and a supportive mother to their children. The Respondent was present at the hearing and he seems to be well taken care of and his needs are properly catered for. It is clear to this Court that the Respondent's medical condition Senile Dementia requires him to have constant care and assistance, the evidence produced in court shows the risk he unintentionally poses to the family's finances and his own well-being and safety.

The petitioner is appointed guardian to the patient to provide medical care services, hygiene and relevant necessities for the care, protection and wellbeing of the patient.

The Petitioner is 67 years old and is not single handedly capable of being constantly present and attentive to his needs and she would require a nurse or some other form of assistance. All these facilities shall incur financial expenses and the Petitioner ought to access the patient's account to maintain the patient and his dependents. The petitioner shall also regularize the patient's financial obligations and manage his estate.

The Court saw the members of the family present in Court and the consents from those residing abroad and is satisfied it is in the patient's interest and in light of his medical condition that the court deems it fit and proper to give the following orders.

### **COURT ORDERS**

- a. M w G is adjudged to be suffering mental health and requires assistance care and support for his wellbeing**
- b. I W M is appointed guardian ad litem of the patient M w G.**
- c. The Petitioner and guardian ad litem shall access the patient's accounts for funds to facilitate the patient's care**
- d. The Petitioner I W M is hereby authorized by this court to administer the finances and properties of the Respondent and manage the patient's estate for his care and well-being.**

**READ AND DELIVERED IN OPEN COURT AT NAIROB THIS 16<sup>TH</sup> DAY OF MAY 2016**

**M. W. MUIGAI**

**JUDGE**

**In the presence of:**

*Mr. Mugambi holding brief for Dr Khaminwa*