



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY AND PROBATE DIVISION**

**MISC. APPLICATION NO. 133 OF 2014**

**IN THE MATTER OF SECTIONS 26, 27 & 28 OF THE MENTAL**

**HEALTH ACT CAP 248 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE ESTATE OF J W M (A PERSON OF UNSOUND MIND)**

**AND**

**IN THE MATTER REGARDING THE APPOINTMENT OF INTERIM MANAGER**

**FOR BOTH THE PERSON OF J W M AND HIS ESTATE**

**BETWEEN**

J N W.....1<sup>ST</sup> PETITIONER

S M W.....2<sup>ND</sup> PETITIONER

F K W.....3<sup>RD</sup> PETITIONER

**VERSUS**

S N M.....1<sup>ST</sup> RESPONDENT

**THE RAPHAELITIES, RED HILL PLACE.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. By a Chamber Summons dated 17<sup>th</sup> July, 2014 brought under **Sections 28(1)** of the **Mental Health Act (Cap 248)** of the **Laws of Kenya Articles 159** of the Constitution of **Kenya, Act, Cap 26** of the **Laws of Kenya, Order 53 Rule (1)** of the **Civil Procedure Rules**, by the Petitioners. They sought orders of the court that:

- a) The first Petitioner be appointed as an interim manager of J W M the Subject herein and his estate, and Petitioner be vested with interim custody, guardianship, care and control of the subject pending the hearing of the application.

b) That the first and second Respondents or their agents be restrained from interfering with the activities and liberty of the Subject pending the hearing and determination of this application.

2. The application is premised on grounds that J W M is a person suffering from Schizoaffective disorder (a form of psychiatric disorder). That the Petitioners are the Subject's nuclear family namely his wife and two adult sons. That the first Respondent on or about 16<sup>th</sup> June 2014, in the company of Police Officers without any knowledge, notice or consultation with the Petitioners and in the absence of the Petitioners, invaded the Petitioners' residence, abducted the Subject and detained him at the second Respondent's rehabilitation Centre.

3. The Petitioners allege that they were denied access at the second Respondent's Centre and their efforts to have the Subject attended to by doctors and professionals of their choice were thwarted by the Respondents. That the Respondents actions are contrary to the provisions of section 3, 14 and 16 of the Mental Health Act and were actuated by improper and ulterior motives in causing the abduction and detention of the Subject from the safe hands of his nuclear family. The Petitioners are therefore apprehensive that the first Respondent and other third parties may continue to interfere with the liberties of the Subject for their own selfish gains.

4. In a supporting affidavit sworn on 17<sup>th</sup> July 2014 the deponent J N W depones that she is the lawful wife of J W M (hereinafter referred to as the Subject) while the second and third Petitioners are the children of the marriage. That there is also another child, a minor from the marriage namely M A W and that the first Respondent is a sister to the Subject.

5. The Petitioner further averred that the Subject has been suffering from a condition known as Schizoaffective disorder which has been accentuated by his abuse of alcohol, drugs and other substances. That the Petitioner and her children love the Subject, and it is because of this love that they took the Subject to the second Respondent's rehabilitation center where his mental condition could be managed properly.

6. The Petitioner argues that as the Subject's immediate family, they have priority over everyone else as far as custody, guardianship, care and control of the Subject is concerned. That the second Respondent took advantage of the Subject's condition to deprive him and his family of any source of livelihood. That the Subject is entitled to a substantial amount of property from the estate of his late father as per Certificate of Confirmation of Grant in P&A 186 A of 2001 which indicates he is entitled to.

7. The Petitioner further averred that the Subject's relapse in the condition of his mind and usage of drugs was as a result of the first Respondent's destruction of the deceased's Estate. That the first Respondent dispossessed the Petitioner of her Mitsubishi truck KBB [particulars withheld] with which she used to support the Subject. The Petitioner is apprehensive that the first Respondent and other third parties may continue to interfere with the liberties of the Subject for their own selfish gains, particularly in order to continue ravaging the deceased's Estate. That the subject has various assets, liabilities and responsibilities that require to be taken care of and which in his current condition he is incapable of handling.

8. The Petitioner prays for a stronger authority in form of an order from this court appointing her as a manager, despite her being in possession of a Power of Attorney, authorizing her to transact on behalf of the Subject.

9. Despite having been served the Respondent did not respond to the application nor attend court to state her case.

10. I have perused the pleadings filed in this matter and heard the submissions of learned counsel Mr. Thuita for the Petitioners. I have also had sight of the expert opinion of Dr. M. M. O. Okonji the Consultant Psychiatrist, in which he confirms that the Subject suffers from schizopaffective disorder which is a form of psychiatric disorder. Further that the Subject's condition is made worse by alcohol and other substances abuse. In view of the foregoing I find that the Subject is a person who is suffering from

a mental disorder. I find that he is not therefore able to take care of himself and to conduct his own affairs.

11. The Petitioner's application dated 17<sup>th</sup> July 2014, is meritorious. In my view being the wife of the Subject is the strongest authority the 1<sup>st</sup> Petitioner could have entitling her to manage the Subject's affairs. In the premise allow the prayers sought with the following orders:

a) The first Petitioner be and is hereby appointed as an interim manager of J W M the Subject herein and his estate, and Petitioner be and is hereby vested with interim custody, guardianship, care and control of the subject pending the hearing of the petition.

b) That the first and second Respondents or their agents be restrained from interfering with the activities and liberty of the Subject pending the hearing and determination of this application.

**SIGNED DATED and DELIVERED** in open court this **21<sup>st</sup> day** of **June 2016**.

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**L. A. ACHODE**

**JUDGE**

In the presence of .....Advocate for the Petitioners/Applicants

In the presence of .....Advocate for the Respondents