



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MURANG'A
MISC CIVIL APPLICATION NO 33 OF 2014
IN THE MATTER OF G M (SUBJECT)
VERSUS
N W.....APPLICANT

R U L I N G

1. This ruling concerns one **G M**. His wife, **N W**, applied by **chamber summons dated 22/04/2014** for two main orders –
 - (a) That her husband, **G M** (hereinafter called the **Subject**) be adjudged to be a person suffering from a mental disorder under the **Mental Health Act, Cap 248**.
 - (b) That the Applicant, **N W**, be appointed as guardian and/or manager of the Subject for purposes, of substituting him as Plaintiff in, or taking over conduct of, **Baricho PMCC No.54 of 2013 – G M –vs- J W**.
2. The application is brought under **sections 26 and 29** of the **Mental Health Act, Cap 248**. There is a verifying affidavit sworn by the Applicant on 22nd April and filed on 28/05/2014. To this affidavit is annexed a medical report on the Subject dated 17/05/2013 by one Dr. Kanyi Gitau.
3. The said medical report shows that the Subject suffered head injuries in a road accident on 11/09/2010. He was admitted in hospital for a total of six (6) days for treatment. When he was examined by the doctor on 17/05/2013 he had to be assisted to walk; he had stammering speech with head-nodding; and had loss of memory, was withdrawn from society and lacked energy. He could not perform any productive activity.
4. The doctor opined that the Subject had sustained severe injuries and he required neurosurgical review with follow-up and physiotherapy.
5. In a second medical report dated 25/09/2015 another doctor, Dr. J.M. Mburu, noted that the Subject was now walking with the aid of a cane; he had slowed motor activity and gait; and he had coordination of movement challenges. He also had profound unintentional tremor involving the head and upper limbs. His mood was low and he had expressionless facial features. His speech was hesitant and monosyllabic, and he had to be prodded to talk.
6. The doctor also observed that the Subject's personality and higher mental functioning were compromised due to the permanent nature of cerebral trauma, and also due to residual signs and

symptoms of post-traumatic stress disorder (**PTSD**).

7. The conclusions of the doctor were that the Subject had permanent physical and mental (cognitive) disability with PTSD; and that his current mental status was such that he may not be able to fully express himself in court, or fully instruct counsel and follow legal proceedings. He recommended that the Subject requires psychiatric/psychological intervention to address the PTSD. He also needed to continue physio and speech therapy.

8. I talked to the Subject in Court on 07/06/2016 at the hearing of the application. He spoke slowly and had an obvious tremor in his head and upper body, but he was able to communicate somewhat. He said that though God had been good to him and he had been improving in his health with treatment, he was still not able to take care of his affairs. He said further that he could hardly stand and walk. He requested that his wife, the Applicant, be appointed his guardian to take care of his affairs.

9. I also note that there are on the court record affidavits by one **S M M** and one **J I M**, who say they are brothers of the Subject. They have no objection to the Applicant being appointed as guardian and/or manager of the Subject.

10. In light of the two medical reports, I consider that this application has merit, and I will allow it. **N W** is hereby appointed the guardian of the Subject **G M** for the purpose only of substituting him as Plaintiff in **Baricho PMCC No 54 of 2013 – G M –vs- J W**, and to prosecute the said case to its logical conclusion. It is so ordered. There will be no order as to costs.

DATED, SIGNED AT MURANG'A THIS 16TH DAY OF JUNE 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 17TH DAY OF JUNE 2016