



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY AND PROBATE DIVISION

MISC. APPLICATION NO. 67 OF 2016

IN THE MATTER OF P M M (A PERSON OF SUFFERING FROM MENTAL DISORDER)

F K N.....PETITIONER

VERSUS

E N M.....RESPONDENT

R U L I N G

1. By a Petition dated 27th May, 2016 brought under **Sections 26-39** of the **Mental Health Act (Cap 248) Laws of Kenya**, by the Petitioner, he sought orders of court that:

- a). The Petitioner be appointed as Manager and Guardian of the Estate of P M M (hereinafter the Subject), a person of unsound mind.
- b). The Petitioner be allowed to manage the subject's finances, pension and bank accounts.
- c). An order that all sums expended by the Petitioner in connection with the maintenance and support of the Subject given by the Petitioner be borne by the Subject's estate.
- d). The Petitioner be empowered to employ professional advisers and pay their proper charges from the estate.
- e). The Respondent be ordered to account for the proceeds of pension in respect of the Subject's account with Barclays Bank, Queens way Account No. [particulars withheld] among others and the estate of the Subject that she has received.

2. The application is premised on grounds that P M M, aged 54 years a person suffering from Alzheimer's disease, a degenerative brain disease that leads to impaired functions and loss of brain cells. That she is not in a position to manage her estate, or make rational decisions and needs home care as advised by the doctor. That the Subject could not legally donate a power of attorney as purported by the Respondent. The Respondent is said to have unlawfully opened account No. [particulars withheld] instead of Account No. [particulars withheld], Barclays Bank Queens Way branch, which was used to process payment of the Subject's pension, and may be used to misappropriate the said pension.

3. The Applicant asserts that E N M, the Respondent herein, who is the Subject's daughter, has been selling and wasting the Subject's property using the said power of attorney. The Respondent is likely to continue intermeddling with the Subject's estate unless prevented by an order of this court from doing so.

4. In a supporting affidavit sworn on 27th May 2016 the deponent F K N depones that he is the brother of P M M (hereinafter referred to as the Subject) who is purported by the Respondent to have donated a power of attorney dated 19th December 2014 in her favour, and registered on 23rd December 2014 by J. W. Kamuyu.

5. Further that the Subject is a daughter of D N M alias D N A now deceased who died intestate and left the following people surviving him who are yet to apply for letters of administration:

i). J N N - wife

ii). F K M - son

iii). J M M - son

iv). N W M - daughter

v). T M N - daughter

vi). P M M - daughter

vii). J N N - son

6. The Applicant attached to his application a medical report from Dr. Caleb Othieno, University of Nairobi, Department of Psychiatry which stated that the Subject presented with a 2 year's history of loss of memory, inability to recognise and name common objects and self-neglect. That a scan of the brain revealed a decrease in brain volume with a corresponding increase in brain fluids. She was diagnosed with Alzheimer's disease which is a degenerative brain disease that leads to impaired functions of brain cells. The doctor counselled the relatives and advised on home care.

7. Having perused the pleadings filed in this matter and heard the submissions of learned counsel Mr. Kurauka for the Applicant, and in view of the expert opinion of Dr. Caleb Othieno the psychiatrist, I am persuaded that the Subject is a person who is suffering from mental disorder. I find that she is not therefore capable of taking care of herself and conducting her own affairs.

There being merit in the Petition dated 27th May, 2016, I hereby allow it in the terms proposed by the Applicant, in prayers no (b) (c) (d) (e) and (g) of the petition.

SIGNED DATED and DELIVERED in open court this 21st day of July 2016.

L. A. ACHODE

JUDGE