



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. 80 OF 2016

**IN THE MATTER OF AN APPLICATION UNDER THE MENTAL HEALTH ACT CHAPTER
248 OF THE LAWS OF KENYA**

AND THE COMPANIES ACT CAP 246

AND

IN THE MATTER OF K W

S W.....PETITIONER

RULING

1. The application before this court is the summons dated 12th July 2016. The same is brought under Section 26, 27, 28 29 and 30 of the Mental Health Act Cap 248 Laws of Kenya.
2. The petitioner S W seeks to be appointed as manager of wards shares and directorship in [particulars withheld] Limited pending rehabilitation of **Mr. K W**. The said application is grounded on basis that; That they have received information that there have been attempts to fraudulently transfer the ward's 950 shares in the company and a notification of change of directors dated 21st January 2015 was fraudulently filed at the Companies registry and the petitioner seeks orders to enable him manage the Ward's share and directorship in the said company as without it Ward stands to suffer irreparable loss if any fraudulent changes are made at the Company registry interfering with his directorship and shares in the company.
3. The application is based on grounds that; the petitioner's brother who is currently admitted at Eden Village, off lower Kabete in an advance state of Alcohol dependency Syndrome with Schizophrenia and as such is incapable of managing his affairs and specifically [particulars withheld] Limited where W is the sole director of the said company.
4. That via misc. application no. 5 of 2016 the court via order dated 13th March 2015 had appointed the petitioner Mr. S W the manager of K W for purposes of managing and operating his bank account held at I&M Bank no. [particulars withheld]. The said order allowed the petitioner to sign all necessary documents including cheques, bankers cheques, money transfer forms or any other documents to facilitate any payments or any debt owed to Jorgs Ark Rehabilitation Center or any other hospital that the Ward may be admitted and to pay all debts as incurred in his medical treatment. That the said account number is the same account used by the aforementioned company. That the petitioner has been managing the said company since the Ward fell ill in 2013. That there was a notification of change of directors dated 21st January 2015 and purportedly signed by the Ward that was fraudulently filed at the Company's registry. The other director S M S had resigned earlier on via an affidavit dated 29th February 2012. That the ward stands to suffer irreparable loss if the changes effected contrary to Ward's best interest and

without the consent of this honorable court. That the court had previously entrusted the petitioner to manage and operate Ward's bank account in I&M A/C Bank no. [particulars withheld] in Misc. application no. 5 of 2016 a role the petitioner is best suited to manage ward's shares and directorship.

3. The petitioner seeks that the court be pleased to grant orders appointing the petitioner [particulars withheld] Limited pending the rehabilitation of the ward.

4. In support of the said application, the petitioner has attached a summary report from Eden village dated 27/5/2016 which gives details of Wards said condition and current situation. The said reports I find the same are adequate and proves that Ward is not able to manage his affairs.

5. This court had earlier on granted the petitioner orders to oversee and manage the Ward's account held at I&M and was to give quarterly reports on the ward's condition and status. The applicant although alleges that there was an intended fraud registration of change of directors no evidence of such allegation has been adduced before this court.

6. However, since this court had granted the petitioner orders in managing the Ward I find that the ward being the only director someone needs to oversee the carrying on of business by the said Company since Ward is not in a condition to do so at the moment. I order that the petitioner herein will oversee the carrying on of business on behalf of the petitioner. The petitioner however **shall not transfer, sell or assign the shares or assets of the said** [particulars withheld] **Limited without further orders of this court.** The petitioner will ensure that any dealings in the said company comply with the laid down laws of the land. For purposes of accountability the petitioner with the aid of a certified accountant will ensure accounts of the said company are filed annually. The applicant shall comply with the court's order of **13th February 2015** on submitting quarterly returns to the Deputy Registrar of Family Division. Cost in the cause Orders accordingly.

Dated, signed and delivered this **19th** day of **August** 2016.

R. E. OUGO

JUDGE

In the presence of;

.....**For the Petitioner**

MS. Charity

Court Clerk