



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
IN THE MATTER OF MENTAL HEALTH ACT CAP 248
MISC. CIVIL APPLICATION NO. 91 OF 2015

IN THE MATTER OF D K M

JUDGMENT

The Applicants, G A K and E K R filed Notice of Motion on 11th June 2015 under **Sections 26 & 27 of the Mental Health Act Cap 248** seeking appointment as legal guardians of their son, D K M who is the subject of this application.

On 16th June 2016 Counsel for the Applicants Mr. Mureithi informed the Court, D K M was employed by the [particulars withheld] on the 15th April, 1991, his employment was later terminated by a letter dated 22nd April 2012 attached and marked '**GAK 2**'. The Authority terminated his employment on the basis that as an employee of the Authority he was absent from duty for more than 10 days without permission or reasonable excuse contrary to laid down procedures and regulations.

On 27th January 2012, Dr. M. A. Makanyengo Consultant Psychiatrist had diagnosed the patient, after discharge from Mater Hospital where he was admitted for 10 days with certain ailments.

He was diagnosed as having a history of;

'epileptic seizures, mental confusion, blackout, alcohol dependency'. As indicated in the medical report by the said doctor attached and marked as '**GAK 4**' to the application. The Applicant however states that his son has lived a difficult life with pressures and seizures since the early eighties that resulted to constant stress and depressions that affected his day to day performance during his tenure at Kenya Ports Authority.

DiagnoLabs wrote a medical Report on the patient's health where they stated;

"The above patient (D K) was at Medanta Africare four months ago. A known epileptic complaint on medication but needed a second opinion on his regular epileptic fits. His medication was increased and the frequency of his epileptic fits has reduced. Also reported [he is] drinking frequently. I had counseled him regarding alcohol and the complication on his health. I had advised the family to get him involved in a rehabilitation centre. Despite all my efforts he has not stopped his drinking habits. In my opinion I feel he is unable to manage his financial affairs."

Dr. M.A.Makanyengo a consultant psychiatrist also wrote a report on the 27th January 2012 on the

patient's health,

“He has been under treatment for alcohol dependency since before 2004 and he has been admitted for detoxification more than 10 times in Mater Hospital. This chronic alcohol dependency has resulted in development of mild cerebral atrophy, epilepsy and confusion states which keep recurring each time he starts drinking again. In most cases once he has been discharged, he goes back to drinking alcohol soon after.”

The Applicants in their supporting affidavit, they stated that their son was wrongfully terminated by [particulars withheld] due to absenteeism from work in June 2012. He had been diagnosed with epileptic seizures, mental confusion, blackouts and alcohol dependency as is evidenced by the medical reports that were submitted to the Authority and are attached to this application. As family they had the Subject treated and rehabilitated which ultimately led to this diagnosis.

The patient is not capable of catering for his own needs nor is he in a position to adequately conduct his own affairs. The Psychiatrist Consultant recommended in the medical report, that due to the Patient's medical condition, he should be retired on medical grounds and somebody takes care of him and supports him. The Applicants have agreed to take care of their son and his estate; they also need to pursue the claim against the subject's former employer.

From the evidence that has been provided to this court it is clear that the Subject is in need of care and assistance. His frequent epileptic fits and excessive drinking habits have marred his judgment making him incapable and incompetent to ensure his general wellbeing and make sound financial decisions. In the circumstances, it is unlikely that the subject on his own will is capable of instituting the legal claim against his former employer; the Applicants are better placed to act on his behalf.

The Mental Health Act, CAP 248 makes provisions for persons suffering from Mental disorders and in this case **Section 26 (3)** provides;

“Section 26 (3) Whereupon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder.”

The Applicants are parents of the patient as confirmed by the letter from the Senior Chief of Murugi East Location dated 30th April 2013 confirming the Applicant as father of the patient. There 2 medical reports that depict the patient's condition and the prognosis is that he needs care and support to ensure his wellbeing and keep his affairs in good order. In the absence of any evidence before this Court of contrary position, the Court finds that the patient requires care and support due to current medical situation.

The Applicants are best placed to manage the patient's estate so as to derive income to cater for the patient's medical and other related expenses for his wellbeing. It is prudent as the Applicants are appointed legal guardians of the patient, they are also appointed managers of the patient's estate.

COURT ORDERS

After considering the evidence by the Applicants and examining documents furnished to this Court, the Court orders as follows;

- 1. G A K and EK R are appointed legal guardians of the Patient D K M under Section 26 of the Mental Health Act Cap 248**

2. G A K and E K R are appointed managers of the Patient D K M estate under Section 27 of the Mental Health Act Cap 248

3. The legal guardians and managers shall ensure maintenance and adequate medical care and support of the patient

DELIVERED SIGNED AND DATED IN OPEN COURT AT NAIROBI ON THIS 16TH DAY OF AUGUST, 2016

MARGARET W. MUIGAI

JUDGE

In the presence of;

N/A