



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISC. APPLICATION NO. 55 OF 2016

IN THE MATTER OF SECTIONS 26 AND 28 OF THE MENTAL HEALTH ACT, CAP 248

AND

**IN THE MATTER OF AN APPLICATION BY H N W AND L W W TO BE APPOINTED THE
GUARDIAN AND MANAGER OF THE ESTATE OF R W W (PATIENT)**

JUDGEMENT

1. The petition dated 5th May 2016 seeks three principal orders:-
 - a. That R W W be declared to be suffering from mental disorder as defined in the Mental Health Act, Cap 248, Laws of Kenya;
 - b. That the petitioners, H N W and L W W, be appointed guardians of the patient; and
 - c. That the petitioners be appointed as managers of the estate of the patient, with the powers enumerated in the said petition.
2. The petition is not supported by an affidavit with supporting facts and evidence, or verifying it as should be the case with any suit commenced by way of petition. However, filed contemporaneously with the petition is an application by way of summons dated 5th May 2016. The summons is supported by affidavits of H N W, S G W, J K W, J T W, M W, C N, Mary W K and A M W.
3. All these affidavits carry complementary information. The deponents are the children of the patient. They state that their mother was at the great age of ninety (90) years. Their father had passed on in 1997. She has begun to dement, a position confirmed by Dr. Ndege, in a report which is attached to the affidavit of the first petitioner. She has become forgetful, confused and experiences difficulty in performing daily tasks. She has property; largely bank accounts and shares in listed limited liability companies. She is said to be unable to manage her affairs, hence the petition.
4. Attached to the affidavit of the first petitioner, H N W, are several documents. There is copy of an identity card of the patient, indicating her date of birth as 1926. A certificate of death in respect of her husband, showing that he died in 1997. A medical report by Dr. K Ndege, dated 30th January 2016, showing that she had been his patient since 2015. His diagnosis indicates that she had diabetes mellitus, had suffered a stroke and had vascular dementia. He concluded that she suffered from significant cognitive impairment, and required supervision in most of her daily activities. He states that she is unable to manage her personal and financial affairs. The rest of the documents relate to her bank accounts and

shares in the listed companies.

5. When the matter was initially placed before me on 9th May 2016, I had directed that the same be heard orally, in the presence of all the surviving children of the patient. I had also required the attendance of Dr. Ndege.

6. At the hearing on 4th August 2016, the petitioners testified, and broadly gave vent to the averments made in the petition as well as in the affidavits on record. The first petitioner testified that he lived at Githunguri, Kiambu, with the patient. He stated that she was unable to do anything for herself, was no longer able to write and was not able to recognise his children.

7. The other children of the patient were also in attendance, in compliance with the order of 9th May 2016. Those in attendance, apart from the petitioners, were S G W, J K W, J T W, M W, C N, M W K and A M W. They all confirmed to the court that they were aware of their mother's condition, and that they had consented to the petitioners being appointed guardians of the patient and managers of her estate.

8. The Mental Health Act is the law governing handling of persons suffering from mental disorder or subnormality in Kenya. It also provides for custody of such persons and the management of their estates. Part XII of the Act deals with judicial power over persons and estates of persons suffering from mental disorder. Section 26 of the Act specifically provides for the making of orders for custody, management and guardianship of such persons and their estates.

9. The petition before me asks the court to make an appointment of guardians for the patient, as well as managers for her estate. From the material before me it is clear that the patient is no longer able to manage herself and her affairs on account of mental disorder arising from the conditions that have been documented in the medical report of Dr. Ndege referred to above.

10. I am satisfied that a case has been made out for the appointment of the petitioners, H N W and L W W, as managers of the estate of the patient, who I have found to be suffering from mental disorder, and to act too as her guardians.

11. The appointment above places the property of the patient in the hands of others. This puts the persons so appointed in a fiduciary position so far as the patient and the estate is concerned. They are trustees so to speak. The petitioners are consequently bound to account to both the court and the patient, should she recover and require an account, of the management of her said estate. They are also accountable to the rest of the family regarding their handling of their mother's estate.

12. The orders that I feel bound to make in the circumstances are:-

a. That the patient, R W W, is hereby adjudged to be a person suffering from mental disorder;

b. That the petitioners herein, H N W and L W W, are hereby appointed guardians of the said patient and managers of her estate.

c. That in exercise of the duties concomitant with the appointments in terms of the order in (b) above, the petitioners shall have the powers that are set out in prayer (c) of the petition dated 5th May 2016; and

d. That the petitioners shall place before court, at the expiry of three (3) months from date hereof, a full and accurate account of their handling of the estate of the patient.

13. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 5TH DAY OF AUGUST, 2016.

W. MUSYOKA

JUDGE