



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI

MILIMANI LAW COURTS - FAMILY DIVISION

PETITION NO. 90 OF 2016

**IN THE MATTER OF THE MENTAL HEALTH ACT, CHAPTER 248 OF THE LAWS OF
KENYA**

AND

IN THE MATTER OF CHEGE NJEKE

JOSEPH JACK NDUNGU MBURU..... APPLICANT

RULING

INTRODUCTION

This Ruling relates to the Notice of Motion Application dated 28th July 2016 in which the Applicant, Joseph Jack Ndungu Mburu, seeks the following orders:

(1)...

(2) That CN be hereby adjudged to be a person suffering from a mental disorder under Section 26 of the Mental Health Act.

(3) That Joseph Jack Ndungu Mburu be appointed as guardian in respect of Chege Njeke.

(4) That Joseph Jack Ndungu Mburu be and is hereby appointed as the Manager of CN's estate which includes any such description of moveable or immovable property, money, debt and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods and to proceed to take over and/or institute any litigation and/or claims and also to include not only such property as has been originally in the possession or under the control of any person but also any property into or for which the same has been converted or exchanged, and anything acquired by such conversion of exchange whether immediately or otherwise.

(5) That costs of this Application be provided for.

THE APPLICANT'S CASE

In his Affidavit in support sworn on 28th July, 2016, the Applicant contended that he is the nephew of CN (hereafter 'the patient') and he is related to him by virtue of the Patient being his father's brother. That the

patient is suffering from an age-related disorder characterized by progressive memory loss, inability to recognize people and to take care of his basic needs.

Further, that the patient has been single throughout his life, has never married or had children. He cannot trace his family except for the Applicant who intends to take care of him.

According to the Applicant, the patient is in need of constant care as he has no ability to make sound judgment, decisions and has no insight into the nature of his infirmity. Additionally, that upon medical check-up undertaken on 14th July, 2016, a Consultant psychiatrist found out that his medical condition had deteriorated and that he is incapable of managing himself and his Estate and furthermore, he possesses no danger whatsoever to others and there is no likelihood that he would act in any manner that is offensive to the public decency.

Based on the foregoing, the Applicant asserted that there is need for the patient to be adjudged as suffering from a mental disorder under **Section 26** of the **Mental Health Act** and a manager to be appointed over his Estate, in order to facilitate his access to medical care and provisions in regard to his welfare and well-being.

DETERMINATION

The Court has considered the present Application and the key issue for determination is whether the orders sought ought to be granted. In that regard, the Applicant primarily seeks to be appointed as a guardian to the patient pursuant to **Section 26** of the **Mental Health Act**. The said Section gives this Court the powers to make orders for custody, management and guardianship in regard to persons suffering from mental disorder in the following terms:

(1) The court may make orders—

(a) for the management of the estate of any person suffering from mental disorder; and

(b) for the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person.

(2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.

(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 rationale behind the enactment of the Act was well stated in **NJUGUNA AND ANOTHER VS SHAH, CIVIL CASE NO 2456 OF 1994 (OS)**, where the Court stated that:

“The general reading of the Mental Health Act (Cap 248) leaves one with the impression that those concerned or suffering from mental disorders are persons who are, to paraphrase, mentally sick. That by the sickness of the mind from one cause or another including taking drugs, a person cannot properly and fully address his mind to his affairs or his estate. That accordingly a manager or a guardian should be put in place on that account.”

The law thus contemplated such scenarios where persons suffering from mental ailments ought to be protected through means such as the appointment of guardians and of great importance, is that each and

every case has to be looked at in its own special circumstances.

In the circumstances of the present case, the Court notes, as per the Medical Report dated 15th July, 2016, prepared by one Dr. Njau J.W, a Consultant Psychiatrist, in regard to the patient, opines that:

“On mental status assessment, I found him to be suffering from an age related degenerative neurological disorder (Alzheimer’s’ dementia) characterized by a progressive impairment of cognitive function consisting of global impairment of intellect manifested as difficulty with memory, attention, thinking and comprehension. Other affected functions include mood, personality, judgment and social behaviour.”

The medical examiner concludes that:

“CN is an elderly man who suffers from a progressive degenerative neurological disorder which has caused significant decline from his previous level of functioning and currently, he does not know the nature and extent of his property. He also does not know the identities of his natural beneficiaries. Therefore, the appointment of a guardian is highly recommended because he has no ability to make sound judgment, to weigh, to reason or to make sound judgment, to weigh, to reason or to make reasonable decisions and has no insight into the nature of disturbance.”

The Court is satisfied that the Applicant has made out a case to grant the orders sought in the Application. Furthermore, the Applicant is related to the patient and he is his nephew and as such, it is in the best interest for the patient to be under his guardianship, to ensure, the patient acquirers adequate and sufficient medical attention and care. It is also in the best interest of the patient that the guardian ensures proper hygiene and nutritional needs; these necessities can only be facilitated by the funds. The guardian shall therefore ensure the availability of funds for the patient’s well-being.

DISPOSITION

For the above stated reasons, the Court holds that:

- (1) CN is hereby adjudged as a person suffering from a mental disorder under Section 26 of the Mental Health Act, Chapter 248 of the Laws of Kenya.**
- (2) Joseph Jack Ndungu Mburu is hereby appointed as a guardian to CN.**
- (3) Joseph Jack Ndungu Mburu is hereby appointed as the manager of CN’s Estate, which includes any such description of moveable and immoveable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money and to proceed to take over and/or institute any litigation and/or claims and also to include not only such property as has been originally in the possession or under the control of any person but also any property or for which the same has been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.**
- (4) The Applicant to bear the costs of this Application.**

DATED AT NAIROBI THIS 13TH DAY OF OCTOBER, 2016

M.W.MUIGAI

JUDGE

In the presence of