



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI**  
**FAMILY DIVISION**  
**MISCELLANEOUS APPLICATION NO. 122 OF 2016**  
**IN THE MATTER OF THE MENTAL HEALTH ACT (CAP 248)**  
**AND**  
**IN THE MATTER OF W K (PATIENT)**

**AND**

N N K.....1<sup>st</sup> APPLICANT  
S N W.....2<sup>nd</sup> APPLICANT

**RULING**

Through an Application by Notice of Motion, the Applicants N N K and S N W sought the following orders;

- (a) That this be certified urgent.***
- (b) That the honourable court be pleased to declare W K as a person with a mental disorder.***
- (c) That N N K and S N W be appointed as managers of the estate of W K.***
- (d) That the honourable court hereby orders N N K and S N W to access the bank accounts held by W K in Barclays Bank of Kenya Limited, Account Number [...] and any other bank account held by W K in any Bank operating within the Republic of Kenya for purposes of paying medical bills of W K.***

The Applicants are the children of the subject in this matter. The grounds for the Application are that the patient has been suffering from mental disorder and as such, he has developed intellectual deficit such that he cannot have an independent existence. The Applicants stated that his condition has continued getting worse over time and he is not realistically expected to recover sufficiently to shoulder any of his previous responsibility and competence.

The patient has one wife by the name, B T W who is 73 years and six children;

a. S K W

- b. J G W
- c. S N W
- d. J N W
- e. N N K

Due to the wife's age she is incapable of caring for the patient and ensuring his well being. The Patient's wife and four children have given their consents to the Applicants being appointed as legal guardians and managers of the Patient's estate.

The Applicants also stated that the hospital bill has escalated at an average sum of Kshs. 100,000 per day and the Applicants and the rest of the Patient's children are unable to settle the same. The Patient's arrears at the Nairobi Women's Hospital has accumulated to Kshs. 600,031.46. The Hospital will discharge the patient unless a substantial amount in his hospital bill is settled. The family of the Patient has given their consent to the appointment of the Applicants for purposes of this Application and proof of the same has been provided.

The petition was supported by an Affidavit sworn by the 2<sup>nd</sup> Applicant where he testified that the Patient was completely immobilized and was unable to sign documents necessary to pay for his medical bill. The Applicant urged the court to appoint him and his sister as legal guardians and managers of their father's estate in order for them to settle their medical bills and to attend to their father's needs.

The Applicants provided medical records of their expenses at the hospital. They also provide a medical report by a Consultant Physician, Dr. Wachira Maina who stated,

***“The above named was admitted in Nairobi Women's Adams on 17<sup>th</sup> September 2016, ICU. Prior to this he was in Melchizedek Hospital. He is not in a mental ability to transact anything as he has been in unconscious status for the last 2 weeks. Any assistance to facilitate his bill settlement will be highly appreciated.”***

Going by the evidence provided by the Applicants it is evident that the Patient suffers from a mental condition under the **Mental Health Act**. His condition requires close medical attention, which the patient himself cannot supervise since he lacks the mental ability to handle his own finances.

### **DETERMINATION**

The **Mental Health Act** is in place to ensure that individuals who suffer from mental illness are well cared for and their estates are properly handled. The **Mental Health Act**, at **Section 26** provides that:

***(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.*

From the evidence provided to this court the Applicants' quest is to settle the medical expenses with the hospital and to ensure the patient is well taken care of. The Patient was the sole provider in the household responsible for the family. Based on the medical report and the medical records, the patient has been undergoing treatment for a while and lacks the mental capacity to perform any financial transactions. He had been unconscious for more than two week prior to the medical examination. It is in the Patient's best interest that his two children, the Applicants, are appointed as his legal guardians and managers of his estate to settle the medical expenses and to ensure that funds are available for his upkeep.

### **DISPOSITION**

In the circumstances the Court holds as follows:

- (a) W K is hereby declared as suffering from a mental disorder as per the Mental Health Act (Cap 248).**
- (b) N N K and S N W are hereby appointed as the managers of the estate of W K.**
- (c) N N K and S N W are hereby appointed as the legal guardians of the patient W K.**
- (d) The court hereby authorizes N N K and S N W to access the bank accounts held by W K in Barclays Bank of Kenya Limited, Account Number [...] and any other bank account held by W K in any Bank operating within the Republic of Kenya for purposes of paying the medical bills of W K and ensuring his well being.**
- (e) The legal guardians are to settle the medical bill of W K of Kshs. 600,031.46.**

**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF OCTOBER, 2016**

**M. W. MUIGAI**

**JUDGE**

**No Appearance by the parties**