



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. NO. 126 OF 2016

IN THE MATTER OF THE MENTAL HEALTH ACT, CAP 248, LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS GUARDIAN OF MMM

AND

APPOINTMENT AS MANAGER OF HIS ESTATE

JUDGEMENT

1. The proceedings herein commenced by way of Chamber Summons instead of by petition as prescribed. The court ordered that the chamber summons be deemed to be a petition.
2. The application dated 11th October 2016 seeks three principal orders:-
 - (a) That MMM (the patient) be adjudged to be a person suffering from mental disorder; and
 - (b) That RNM be appointed the primary guardian of the patient, jointly with JMMM and CMM; and
 - (c) That RNM be appointed the primary manager of the patient, jointly with JMM and CMM with the powers enumerated in the said application.
3. The petition is supported an affidavit with supporting facts and evidence, sworn jointly by the three applicants. The said affidavit was sworn on 1st October 2016. The patient is the father of the applicants. They aver that the patient suffers from Parkinson's disease. He has a neurological disorder which has rendered him mentally incapacitated him and made him incapable of managing himself and his affairs.
4. The application was prosecuted orally on 24th November 2016. The petitioners testified, and gave vent to the averments made in the papers that they had lodged in court in support of their case.
5. The medical report placed on record is by Dr. K. Ndege, a consultant neurologist at Nairobi and Kenyatta National Hospitals, dated 25th May 2016. It indicates that the signatory had been attending to the patient since 11th February 2011. The doctor states that the patient suffers from Parkinson's disease with dementia. He is described as having incomprehensible speech.
6. The law which governs the handling of persons suffering mental illness is the Mental Health Act. It also provides for custody of such persons and the management of their estates. Part XII of the Act deals

with the judicial power over persons and estates of persons suffering from mental disorder. Section 26 of the Act specifically provides for orders for custody, management and guardianship of such persons and their estates.

7. I am satisfied from the material before me that the patient is no longer able to manage himself and his affairs on account of mental disorder arising from the conditions that are documented in the medical report by Dr. Ndege that I have referred to above. I have found him to be suffering from mental disorder.

8. I am satisfied that a case has been made out for the appointment of the applicants, as guardians of the patient and the managers of his estate.

9. The position of the manager of the property and the affairs of the patient places the property of the patient in the hands of others. This puts the applicants in a fiduciary position so far as the patient and the estate is concerned. This makes them trustees. They are bound to account to the court, and they are as such required to file with the court regular accounts of their management of the said estate.

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

(a) That the patient, MMM, is hereby adjudged to be a person suffering from mental disorder;

(b) That RNM is hereby appointed the primary guardian of the patient, jointly with JMM and CMM;

(c) That RNM be appointed the primary manager of the patient, jointly with JMM and CMM with the powers enumerated in the said application and the Mental Health Act; and

(d) That the applicants 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.

11. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 16TH DAY OF DECEMBER, 2016.

W. MUSYOKA

JUDGE