



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**MISCELLANEOUS CAUSE NO 15 OF 2015**  
**IN THE MATTER OF CAPTAIN P G M**

**RULING**

Captain P G M, the subject of these proceedings, is an old man aged 65 years. He is the father of the Applicants, A N G and L W M, as evidenced by their birth certificates attached to the application No. *[particulars withheld]* and No. *[particulars withheld]*. They are his daughters with his companion and caregiver S W G, their mother who has also sworn an affidavit attached to this application of 25<sup>th</sup> February 2015.

From 25<sup>th</sup> January 2014, the subject has become of unsound mind and has mental impairment due to a terminal illness and addiction to alcohol. His physical and mental health has deteriorated; he is frail, does not eat and refuses medical care and taking medicine. He is recluse in the house for weeks without leaving the house. He has declined to attend clinics or see a doctor and has been forced to seek medical care intermittently. He coughs into the long hours in the night and is forgetful and suffering from dementia. As a result, he is in danger of imminent death if urgent medical care is not availed or accessed soon.

The subject has gone through difficulties with employment, health and family issues as outlined in the affidavit of S W G, and therefore requires urgent medical care and support. He has been admitted before as evidenced by the particulars and annexure of the affidavit by S G. The letter by Dr JA Aluoch of 24<sup>th</sup> February 2015 is attached and it confirms the same.

**REF: P G M**

***The above named was admitted to the Nairobi Hospital on 25<sup>th</sup> January 2014 with multiple medical problems. He had a history of cough, headache, weight loss, confusion, fever on and off and poor feeding.***

***He was very sick looking man wasted, and confused. ... He was disoriented in time, place and person. ... He was in short, in acute organic confusion state.***

***He is not capable of making any rational decision.***

The subject requires a guardian to provide maintenance and support for his well being and especially round the clock care and attention.

The subject has been responsible for maintenance and upkeep of the family the companion S and two (2)

daughters A and L. They have annexed copies of cheques and receipts to confirm the subject's involvement and payment of school and college fees and subsistence for the daughters. They depend on him socially, emotionally and financially. They currently reside with him at his residence **[particulars withheld]** Garden Road off Riverside Drive in Nairobi.

The subject is the owner of various properties enumerated in paragraph 6, 14, and 16 of the affidavit filed by A N G of 19<sup>th</sup> February, 2015 and has accounts as evidenced by the annexure to the application.

Due to the subject's condition employees, agents and friends have taken advantage of him leading to loss of substantial investments and monies from him. The properties are going to waste, the properties are in a state of disrepair, and the rents are not remitted to the subject, hence the need for a manager of the estate.

In light of the application made *ex parte* and under certificate of urgency of 10<sup>th</sup> February, 2015 and the affidavits of the family members and annexure thereof the applicants seek the Court to make orders that firstly; provide for the well being of the subject and secondly protect the properties of the subject from wastage.

**Section 26 of the Mental Health Act Cap 248** allows the Court to make orders for the management of the estate of any person suffering from a mental disorder and for the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person.

The court is satisfied from the pleadings that S G, A G and L W G, the subject's companion and his children respectively are the most near relatives and suitable persons to take care, provide medical attention and have him obtain round the clock attention and care for the subject herein. They will jointly carry out the guardianship over the subject firstly to ensure immediate and urgent medical care for the subject and to provide for his food, hygiene, medicine and other support. They will make proper provisions for his maintenance and care and provide status and/or progress report to the court.

With regard to the subject's estate, the court finds that the three applicants, the companion and daughters of the subject, shall operate as joint managers over his estate; to access and operate his bank accounts; collect, and bank the rent payments and provide proper accounts to the court. As managers, as provided under **Section 27 of the Mental Health Act, Cap 248**, they shall jointly have general and special powers for the management of the estate and comply with the provisions of **Section 27** of the Act. The duties include providing for payment of his medical expenses, upkeep and care of family dependents and repair and maintenance of his properties.

Of importance, the applicant annexed draft minutes from the extraordinary meeting of **[particulars withheld] LIMITED** where the subject is one of the shareholders. On page 1 of the minutes, it is alluded that the subject as of 15<sup>th</sup> January 2014, he agreed to sell his 25% share of the plot where he resides. No valuation report was provided. He could not have made proper judgment as his decision-making capacity is impaired by the current illness that has been ongoing for a longtime. The court orders that all matters pertaining the sale or buyout of the subject's interest is set aside until the managers of his estate step in and further orders from the court.

In sum total of the proceedings and the submissions made by Counsel Mr George Miyare made today and in light of the urgency of the situation demonstrated by the applicants and the contents of the affidavits, the Court orders as follows:

1. S G, A N G and L W G are appointed joint guardians of Captain P G M, the subject, to provide maintenance, support and well-being of the subject.
2. The subject, Captain P G M, be provided with immediate/urgent medical care and attention by Drs Aluoch, Dr Okonji and Dr Lule, the team that attended to him as shown by the annexed documents of S G's affidavit.
3. The 3 Applicants, S G, A N G and L W G, are hereby appointed joint managers of the subject estate:

- a. ***[Particulars withheld]*** Apartments, Apartment ***[particulars withheld]***, along Garden Road off Riverside Drive;
- b. All other properties listed in the supplementary affidavit;
- c. Access to the bank/bank accounts A/C ***[particulars withheld]*** Barclays Bank Plaza Branch and provide for his upkeep and medical expenses and the family members who depend on him.
- d. Collect and receive rent payments of the subject's property and carry out maintenance and repair work and pay out all utilities;
- e. The managers to account for the proceeds, monies received and properties dealt with by filing a status or progress report in court in 1 month;
- f. All negotiations, transactions and transfers already commencing over properties comprising the subject's estate and any/all manner of the dealings in respect of the said estate are suspended pending further orders of this court.

**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MARCH 2015**

**M. MUIGAI**

**JUDGE**