



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS - FAMILY DIVISION
MISCELLANEOUS APPLICATION NO 93 OF 2015
IN THE MATTER OF D H L H
THE MENTAL HEALTH ACT CAP 248
R J H.....1st Petitioner
E L C.....2ND PETITIONER

RULING

The Applicants filed an application under certificate of urgency on 12th June 2015 in the Constitutional Division of the High Court and the same was transferred to the Family Division of the High Court.

On 16th June 2015, the matter was mentioned with the Applicants' Counsel and the hearing was scheduled to the 25th June, 2015.

The Applicants deposed that they are husband and daughter of the Subject respectively. The subject, D H L H was diagnosed with severe dementia by Dr. Basil King.

During the hearing, the Applicants, Dr. Basil King and their Counsel; Ms Odipo holding brief for Mr. Kamau informed the Court that the subject had deteriorated in health specifically mental health in form of acute dementia that it was necessary for a guardian to provide care and support of her wellbeing and a manager to appoint a manager of her estate.

The 1st Applicant informed the Court that his wife is unwell and could not be brought to Court. She is bedridden with nursing care. She cannot speak and she is unaware of her surroundings. He required the Court's intervention so as to enable him sign documents on behalf of the wife, he said the subject owned jointly with him property Land Reference 2327/339 Mbagathi Lane/ Langata.

Dr. Basil King confirmed that he had treated the subject and she suffers dementia. He produced the medical report on 29th June, 2015. The report confirms the subject has undergone medical care from 31st January, 2012 up to 25th June, 2015 on various ailments culminating to severe dementia. The doctor's view on examination was;

***“She is incapable of understanding, or holding a conversation. She cannot make any decisions. She is incontinent and needs to be fed. She needs continuous supervision of her carers.*”**

In view of the rapid onset of dementia.... The prognosis is for further worsening. There is no prospect of any improvement.’’

The Applicants deposed that there is an imminent sale of their property which is owned by the 1st Applicant and the subject. Since the subject is unwell she is unable to take care of herself and further lacks the mental capacity to sign documents under the Kenyan Law.

Section 26 of the Mental Health Act Cap 248 in Part XII allows the Court to make orders for custody, management and guardianship of the subject who is proved to suffer mental disorder.

In the instant case the applicants’ husband and daughter of the subject deposed to the Court the subject’s condition. She is unable to care for wellbeing and manage her affairs. Their testimony is supported by the Doctor’s evidence and medical report produced in Court. The report confirms the subject’s state of health and her incapacity.

In the absence of any objection from any other near relative of the subject to the Applicants being appointed legal guardians of the subject and lack of contrary evidence of the subject’s state of health; the Court allows the Applicants’ application in the following terms;

The Applicants R J H & E L C are appointed as joint legal guardians of the subject D H L H to provide for her care and wellbeing; adequate medical care, hygiene, conducive environment and sufficient provision.

The Applicants are also appointed as managers of the subject’s estate, they shall have both general and special powers for the management of the estate among them; L.R.2327/339 Mbagathi Lane/ Langata in accordance with **Section 27 of the Mental Health Act Cap 248** that the estate shall be managed in such a manner to provide proper provision to the subject.

Read and signed in open Court on 14th August 2015 in the presence/absence of parties/ Counsel.

M.W. MUIGAI

JUDGE