



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
MISCELLANEOUS CASE NUMBER 76 OF 2015
IN THE MATTER OF R W K

FRANCIS MAINA KABUGI.....1ST PETITIONER

MARY WANGECHI MUTURI.....2ND PETITIONER

RULING

1. By a petition filed on 14th May 2015, the Petitioners, son and daughter of the subject, R W K, sought orders of appointment of legal guardians of the subject and managers of the subject's estate.
2. The application is based on the following grounds;
 - a. The patient is advanced in age and suffers from a mental disorder. She was diagnosed with severe dementia 10 years ago and has been on treatment since then to date. The Doctor's Medical Report on the patient's condition dated 25th April, 2015 is attached as 'RWK1'
 - b. The patient suffers from severe impairment that she is unable to make decisions and attend to her well -being and manage her affairs.
 - c. The petitioners' father Kabugi Macharia took care of the patient until he passed on, on 31st December 2014 as per the attached death certificate marked 'RWK2'. The children of the patient and deceased have been taking care of the patient.
 - d. The patient is critically ill and is in need of urgent and proper medical care.
3. The patient and her husband now deceased held a joint bank account, which funds should be used to facilitate the patient's medical care expenses. The petitioners cannot access the funds in the said account without Court orders, as they are not signatories to the account.
4. The patient as the wife of her husband now deceased is entitled to the funds for medical care but is incapacitated from accessing the account and /or filing or obtaining a grant of representation to the deceased's estate.
5. It is in the best interests of the patient that the petitioners access the funds from the account to get her the medical care she requires in her state of health.
6. On 13th October 2015, the petitioners appeared in Court with the siblings who gave consents to the

petitioners being appointed legal guardians and taking charge as managers of the patient's estate. The siblings are;

- a. Francis Kabugi
- b. Mary Kabugi
- c. Hannah Kabugi
- d. Jane Kabugi
- e. Tabitha Wanjiru
- f. Sam Njuguna
- g. Joseph Kungu
- h. Henry Macharia

7. The Court has considered the petition and prayers sought.

Section 26 of the Mental Health Act prescribes the custody, management and guardianship of patients under the Act.

This Court is satisfied from the evidence in the petition and hearing proceedings that the patient suffers from mental disorder such that she is unable to take care of her wellbeing and conduct of her affairs. She is need of continuous attention; support and medical care for her wellbeing and her affairs.

Section 27 of the same Act prescribes a manager for a patient who has general and special powers for management of the patient's estate with specific consideration to the type of properties to be placed under management.

In the instant case, the petitioners seek to access the patient's and her late husband's account for funds for urgent medical care.

The Court grants the orders as follows;

1. The petitioners, Francis Maina Kabugi and Mary Wangeci Muturi are appointed under **Section 26 of the Mental Health Act**, legal guardians of the patient, R W K.
2. The Petitioners, Francis Maina Kabugi and Mary Wangeci Muturi are appointed under **Section 27 of the Mental Health Act** managers of the patient, R W K's estate. They shall make proper provision for her maintenance; upkeep and care.
3. The petitioners by virtue of being legal guardians of the patient and managers to her estate shall access account number [particulars withheld] at Kenya Commercial Bank (KCB) Kenol Branch for funds to facilitate the patient's medical care.
4. No orders as to Costs

DELIVERED, DATED AND SIGNED IN OPEN COURT AT NAIROBI THIS 21ST DAY OF OCTOBER 2015.

M.W. MUIGAI

JUDGE

In the presence of;

Parties and Counsel