



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
(FAMILY DIVISION)

MISC. APPLICATION NO. 154 OF 2014

**IN THE MATTER OF G N M AND IN THE MATTER OF MENTAL HEALTH ACT, CHAPTER
248 LAWS OF KENYA**

RULING

1. This application was initially before Justice Muigai who on 23rd February 2015 and Justice Mungai appointed **L M M** and **P G** as managers of the said estate for the care and upkeep of the subject and to protect it for the children of the subject. Via an application dated 20th February 2015 the applicant herein sought review and setting aside of orders issued by Justice Muigai on basis that new and sufficient evidence came to light that the court that grant the said orders was influenced by extraneous factors adding that the honorable court was well known to her late father and other members of the family and was alleged to have interest in the outcome of the matter. Justice Muigai on 9th July 2015 recused herself from the matter and expunged the proceedings on record and the matter was placed before this court for determination of the said application.

2. The petitioner **L M M** is the daughter of **G N M** hereinafter referred to as **G** is a person suffering from mental disorder within the meaning of the Mental Health Act. **G** is a widow her husband having died on 13th March 2014 and has several other children but is currently under the care of the petitioner since 2008. The Petitioner states that her late father died leaving a vast estate which was distributed amongst his beneficiaries with **G N M** inheriting the following properties

- i. Eldoret Municipality /Block [particulars withheld]**
- ii. L.R. No. [particulars withheld] Situated at Ndege road, Karen**
- iii. L.R. No. [particulars withheld] Situated at Ndege road, Karen**
- iv. L.R. No. [particulars withheld] Situated at Ndege road, Karen**
- v. Half of Kiptagat/Kiptagat/ Block [particulars withheld]**
- vi. Half of Kiptagat/Kiptagat/ Block [particulars withheld]**
- vii. Half of Eldoret Municipality Block [particulars withheld]**
- viii. Half of Kiambu [particulars withheld]**
- ix. Half of L.R. No. [particulars withheld]**

3. That G had been appointed the executor of the deceased under the will but she cannot manage her properties nor can she discharge her duties as an executor under the will. That since 2008 G has been ill and has become totally dependent on the petitioner for personal care and upkeep and has lost her ability to manage her personal affairs. That the petitioner has been paying all of her medical bills ensuring that she gets all her basic needs.

4. The petitioner prays that G N M be declared to be suffering from a mental disorder and she be appointed manager of her estate as well as her guardian and a reasonable remuneration for her upkeep be provided periodically for her maintenance from her property.

5. The petitioner's affidavit in support of the said application dated the 25th of August 2014 reiterates the grounds as laid out in her said application. She states that she has 6 siblings namely P G, T M, M W, J M and J N adding that she spends approximately Kshs. 85,000 towards G's maintenance in paying salaries and more to pay for her medication. That G's properties generate approximately Kshs. 500,000/- per month.

6. There is a letter by Dr. Eva Njenga dated 24th July 2014. She confirms that G N M memory has deteriorated and she can no longer make any decisions for herself. Annexed are also treatment notes from The Nairobi Hospital that show various medications prescribed for G M, receipts for payment for consultation at Chinese general Clinic Co. Limited, Healthy Mind Consultants Nairobi hospital inpatient bill dated 27/05/2014. These documents in my view prove that G M is unwell and incapable of handling her personal matters and is in need of personal care and maintenance. The same also prove that due to the medical treatment requirements of G N M a reasonable sum needs to be allocated towards her maintenance. When the matter came for hearing G M's children were in court with exception of T M who is deceased and P G who was said to be in Eldoret but has signed a consent filed in court on the 28th August 2014 consenting to the petitioner being appointed a guardian ad litem/ manger of their mother G. C K, M W, J M and J N had no objection to the applicant's application for G N M to be declared to be suffering from a mental disorder and also for the applicant to be appointed manager of her estate as well as her guardian. The applicant has also sought reasonable maintenance for G M's maintenance, I find that the applicant has proved there is need as the subject is undergoing treatment.

7. In view of the foregoing, I find that the application is merited and in the interest of justice and fairness, this court accordingly orders under Section 26 (1) of the Mental health Act that **L M M** be appointed Manager of **G N M** for purposes of personal care and maintenance and also for managing the properties of **G N M** as the said G is suffering from mental disorder known as dementia. I note that the estate of the subject is generating income from the said income. The applicant herein will open an account where she will deposit the amounts from the subject's properties. From the income generated by the subjects properties **Kshs. 80,000/-** will be taken by the applicant for maintenance and upkeep of G N M. For purposes of accountability, the applicant herein will file a report with the Deputy Registrar every quarterly from the date of this ruling. The same will give the status and condition of G N M and also a statement for the income received from the subject's properties. Cost in the cause. It is so ordered.

Dated, signed and delivered this **18th** day of **November** 2015.

R. E. OUGO

JUDGE

In the presence of:-

.....**For the Applicant**

Ms. Charity

Court Clerk