



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CAUSE NO. 13 OF 2014

IN THE MATTER OF THE ESTATE R K W (MENTAL PATIENT)

W K.....APPLICANT

VERSUS

A W.....RESPONDENT

RULING

PLEADINGS

The application filed on 2nd September, 2014 dated 1st September, 2014 seeks an order of temporary injunction to restrain the Respondent her agents and servants from whatsoever dealing with all that property L.R. NO. NO RUIRU/KIU [Particulars withheld] (MWIKI) and Plot No. [Particulars withheld] in L.R. No. [Particulars withheld] Njiru Nairobi pending the hearing and determination of the application and letter of the suit.

The application is grounded on the facts;

The mental patient is the lawful owner of L.R. Ruiru/Kiu Block [Particulars withheld (Mwiki) and Plot No [Particulars withheld] in L.R No. [Particulars withheld] Njiru Nairobi which property was acquired through well-wishers contributions.

The properties were registered in the name of the older brother, G W W (the Respondent's husband) who assisted the patient in medical expenses and proper care.

Upon the death of the brother, the brother's wife the Respondent has neglected the mental patient and instead transferred the properties to her name.

The application is hereby brought by the father of the mental patient and he has sworn the affidavit of 2nd September, 2014 that the older son took care of the younger brother who is the mental patient but since his death, the son has suffered from lack of care and instead the Respondent transferred the land to her name.

The Respondent filed a Replying Affidavit of 8th October, 2014 and stated that she has been undertaking care of the mental patient since the death of her husband.

ORAL SUBMISSIONS

During the oral hearing of the application;

The Counsel for the Applicant informed the Court that there was no proof of the quality of care given to the mental patient. The supplementary affidavit of the father of the patient of 5th November, 2014 depicts from the attached photographs the mental patient is in a deplorable state, in unhygienic condition.

The Respondent claimed through Counsel that the plots current rental houses do not fetch a lot in terms of rent and therefore is not sufficient to look after the mental patient.

LAW

Geila Vs Cassman Brown & Company Ltd (1973) E. A. 358 provides that for an injunction to issue

- a. The Applicant must show a prima facie case with probability of success
- b. The Applicant may otherwise suffer irreparable damage, injury or loss if the injunction is not granted and the same is not compactable by damages

In cases when the Court is in doubt then the application should be determined on the basis of a balance of convenience as stated in the case of **E. A Industries Vs Trufoods (1972) E.A 420**.

The Court has considered the evidence and from the photographs the mental patient is in deplorable state. He is need of medical care. There is no evidence of care of the mental patient by the Respondent. The attached documents confirm that the mental patient is the legal owner of the two (2) properties and should benefit from the same. The older brother and husband of the Respondent is now deceased and therefore the property ought to be owned by the mental patient and he should obtain any/all benefit from the ownership of the two (2) plots.

These circumstances confirm a prima facie case with probability of success. If the injunction does not issue, the mental patient health will continue to deteriorate.

The Court therefore orders as follows;

- a. That a temporary injunction to issue in terms of paragraphs 2 and 3 of the application of 2nd September, 2014.
- b. By virtue of **Section 26 of the Mental Health Act Cap 248**, the father of the mental patient/ the Applicant is appointed the guardian of the mental patient to ensure he obtains proper medical care and hygiene.
- c. The guardian/applicant will collect the rents for the two (2) plots and use the proceeds for the maintenance of the mental patient.
- d. The transfer of land from the deceased (brother of the mental patient) to the Respondent is stopped or revoked.
- e. Each of the party may apply.
- f. No order as to costs.

READ AND SIGNED AT NAIROBI THIS 15TH DECEMBER, 2014 IN OPEN COURT

M. MUIGAI

JUDGE

In the presence of;

Mrs Ochieng for the Applicant and in the absence of Counsel for the Respondent.