

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous 18 of 2013

IN THE MATTER OF ELIUD MAINA WANJOHI – (DECEASED)

JUDY WANJIRU WAMAE -----PETITIONER

RULING

Judy Wanjiru Wamae has approached the court by way of Notice of Motion, brought under the provisions of the Mental Health Act and **Sections 1A** and **3A** of the Civil Procedure Act and Order 32 rule 15 of the Civil Procedure Rules.

The applicant is the daughter- in -law of the subject of the applicant, Eliud Maina Wanjohi. Her husband is dead, and she is the only person living with the subject. She seeks to be appointed manager of the estate of Eliud Maina Wanjohi, whose mental stability has suffered depression.

The application is by way of a Notice of Motion, yet the applicant is described in the application as a petitioner. There is no petition on record. I doubt whether these proceedings are competent. Motions are interlocutory. They are brought within a suit. They do not originate actions. Actions are originated either by plaint, petition, originating summons or originating motion. It would appear that the Motion dated 19th March 2013 has no foundation.

It was held way back in 1972 by Harris J in *Re NS* (1972) EA 292, that an inquiry into whether a person is suffering from mental disorder can only be initiated by petition. The proceedings in that matter were initiated by means of an originating summons, when they should have been commenced by petition and it was held that the proceedings were a nullity.

Applications under **Section 26** of the Mental Health Act are for appointment of a person to manage the estate of a mental patient. Administrators of estates of deceased persons are appointed by the court in proceedings commenced by way of a petition. Similarly, appointment of persons to administer estates for persons who are alive but of unstable mind should be in actions brought by way of a petition.

I need not say more. The applicant in this matter ought to have initiated the present proceedings by petition, not by Motion. It follows that the proceedings are a nullity. I will strike them out. There shall be no order as to costs as the application is *exparte*.

DATED, SIGNED and DELIVERED at NAIROBI this 16th DAY OF May, 2013.

W. Musyoka
Judge