



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

MISC APPL NO. 189 OF 2012

IN THE MATTER OF THE MENTAL HEALTH ACT, CAP 248

AND

IN THE MATTER OF JOSEPH GATHECHA KINYANJUI

1. GEORGE GATHECHA KINYANJUI

2. TERESIA NGINA KINYANJUI.....APPLICANTS

RULING

1. This is an application (by **amended chamber summons dated 29th November 2012**) under **section 26** of the **Mental Health Act, Cap 248** (the Act). It seeks three main orders -

(i) That **JOSEPH GATHECHA KINYANJUI** (hereinafter called the **Subject**) be declared to be suffering from a mental disorder “as defined under the Mental Health Act”.

(ii) That the court be pleased to appoint the Applicants, **GEORGE GATHECHA KINYANJUI** and **TERESIA NGINA KINYANJUI** as the managers of the estate of the Subject with powers to:

- a. Take any action necessary to institute proceedings in court for the protection preservation of the estate of the Subject, including but not limited to the property known as L.R. Kiganjo/Gachika/799.
- b. Any other action to preserve and protect the interests of the Subject.

(iii) That the Applicants be appointed guardians of the Subject.

2. The application is premised upon the grounds –

(i) That the Subject is mentally ill and consequently incapable of managing his own affairs.

(ii) That the Applicants intend, if appointed as sought, to institute proceedings in court for the protection and preservation of the estate of the Subject.

(iii) That it would be in the Subject's best interests to grant the orders sought.

3. The application is supported by two affidavits sworn respectively by the Applicants. The 1st Applicant states in his affidavit that he is a step-brother of the Subject; that the Subject is mentally ill as he suffers from chronic schizophrenia and is thus incapable of managing his own affairs; that he was never married and does not have any children; that he was the only child of his mother Waruguru Kinyanjui (who was one of the wives of the Applicant's father Kinyanjui Gathecha; and that the Subject has one other living step-brother, **Pius Njoka Kinyanjui**, who had given his consent for the orders sought. That consent is annexed to the affidavit. Also annexed is a **medical report on the Subject dated 20th March 2012**. It is signed by Dr. Kisivuli, A.J., a Consultant Psychiatrist.

4. The 2nd Applicants' affidavit is in the same vein as the 1st Applicant's.

5. The medical report states that the Subject (who was then aged 72 years) suffers chronic **Schizophrenia**; that this is a debilitating mental illness and is life-long; that he has been followed up on treatment since 1978; that he is on daily medication; and that any crucial decision concerning his welfare should be made in consultation with his immediate next of kin.

6. I am satisfied from the material now before the court that the Subject, JOSEPH GATHECHA KINYANJUI, suffers from a mental disorder to such an extent as to be incapable of managing his affairs. I so declare. I will in the circumstances grant the orders sought in prayers 2 and 3 of the application. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 7TH DAY OF AUGUST 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 15TH DAY OF AUGUST 2013