



REPUBLIC OF KENYA

High Court at Nakuru

Miscellaneous Application 51 of 2009

IN THE MATTER OF SECTION 26, 27 & 28 OF MENTAL HEALTH ACT (CAP 248) LAWS OF KENYA

AND

IN THE MATTER OF

E.W.M. (a.k.a) H.W.M. SUBJECT

AND

MARTIN MAINA WANJA PETITIONER/APPLICANT

RULING

The application dated 27/07/2010 is made under **Section 28** of the **Mental Health Act (Cap 248)** and seeks:

1. For extension of time within which the applicant **E.W.M.** shall manage the estate of **E.W. M.** (subject)
2. That the court do authorise the Director of Pension (Treasury) to release to the applicant, the subject's retirement benefits.

It is premised on grounds that:

- (1) On 30/3/09, the applicant was appointed manager of the subject's estate for a period of 12 months. However the period has lapsed and the applicant is yet to collect the subject's retirement benefits from Teachers Service Commission.
- (2) The subject is still mentally challenged and therefore unable to manage her own affairs.
- (3) Those retirement benefits are needed to enable the applicant take care of the subject.

The applicant deposes in the supporting affidavit that on 24/02/09, he petitioned the court to appoint him manager of the subject's estate and such orders were made which were to last for a period of 12 months. He served the order on the Teachers Service Commission (TSC) so as to claim the subject's benefits and followed the same keenly. Eventually TSC wrote to him a letter dated 26th June 2010 notifying him that the claim had been forwarded to the Pensions Department for payment and he should follow the same with the Director of Pensions.

A medical report dated 24/07/2012 signed by Dr. Kamande, the Medical Services Officer, Nyahururu District Hospital confirms that the subject is suffering maniac depressive psychosis and is not in a position to make any rational decision.

From the record it is apparent that this application was argued before Maraga J on 27/7/2010 and dismissed on grounds that the orders sought to be extended lapsed on 17/4/2010 and there was nothing to extend. The matter is therefore Res Judicata.

Delivered and dated this 11th October, 2012 at Nakuru.

**H.A. OMONDI
JUDGE**