



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Miscellaneous Civil Application 113 of 2007

JAMES GICHERU MURIUKI

WANJIKU MURIUKI

WANJIRU MURIUKI

ANN RUGURU MURIUKI

ELIZABETH MUMBI MURIUKI

JOSEPH WACHIRA MURIUKI ..... PETITIONERS

*Versus*

ROSE MUMBI MURIUKI..... OBJECTOR

**RULING**

Following interlocutory application this court by its ruling delivered on 5<sup>th</sup> November 2007 amongst other things issued prohibitory order against properties belonging to the subject **Francis Muriuki Wahome**. The court further in that ruling ordered that Kshs. 3,031,989 be deposited in court. Out of that money deposited in court, the court ordered kshs. 100,000 be released to James Gicheru Muriuki who was appointed guardian of the subject. Those orders amongst others were made on the basis that the court on a *prima facie* basis found the subject's property needed protection as provided under **Section 26** of the Mental Health Act Cap 247. Before court now is a notice of motion dated 17<sup>th</sup> November 2008. That application is brought by the objector in these proceedings who is also the wife of the subject. The objector Rose Mumbi Muriuki deponed in her affidavit in support that the subject has two sons who require provision to be made for their school fees. Those sons are BRIAN MWANGI GATHONI who is said to be in standard eight class and MICHAEL MWANGI MURIUKI attending Park University in U.S.A. The objector stated that the family needs Kshs. 100,000 per month for their upkeep. She prayed that the amount be released by the court from the amount deposited in court. She deponed that neither her nor the subject have any source of income which can cater for the family needs. Finally she stated that James Gicheru Muriuki had failed to provide maintenance for the subject. In support of that application, learned advocate Mr. Julius Kitheka argued that kshs. 100,000 per month would cater for the school fees for the sons and would take care of other outgoings. He submitted that although the court had ordered that the subject be placed under the custody of James Gicheru Muriuki the subject had continued to live with his wife. That application was opposed. In the replying affidavit sworn by the petitioner James Gicheru Muriuki stated that Brian Mwangi Gathoni was not a son of the subject. Further that the objector and Michael Muriuki had leased 8.0 acres to Everest Enterprise Limited for Kshs. 5,500 per acre per year for 10 years. That lease commenced on first January 2007. The petitioner further stated that he had been buying medicine for the subject but when he has attempted to deliver the medicine the objector has released the dogs to him. As a consequence one of his co-petitioners Ann Ruguru Muriuki was bitten by a dog. The petitioner however stated that he was willing to continue buying the medicine for the subject.

As stated before the court by its ruling of 5<sup>th</sup> November 2007 ordered that the subject's properties be protected and his money be deposited in court pending full hearing of this petition. The court so far has

order Kshs. 300,000 be released to James Gicheru Muriuki for the purpose of paying for the subjects medical expenses. The said James stated, and it has not been contradicted that he has continued to purchase that medicine but the objector has denied him access to deliver the same. In view of the fact that, that contention was not denied by the objector, the need of the objector to have money to buy medicine is therefore without basis. The need for school fees on the basis that the objector has no income is also defeated. This is because contrary to the objector's statement the objector is in receipt of rental income from Everest Enterprise Limited. Further the objector exhibited 'RMMI' which shows that she remitted kshs. 263,555.50 on 3<sup>rd</sup> October 2008 to Michael Mwangi Muriuki in U.S.A through Equity Bank at Karatina. That remittance is a clear indication that the objector has a source of income. For those reasons the notice of motion dated 17<sup>th</sup> November 2008 is dismissed with costs to the petitioners.

*Dated and delivered this 27<sup>th</sup> day of January 2009.*

**MARY KASANGO**

**JUDGE**