



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Miscellaneous Application 360 of 2002

IN THE MATTER OF SECTION 26 OF THE MENTAL HEALTH ACT,

CAP 248

AND

IN THE MATTER OF RAMESH LILADHAR SHAH

JOSEPH KIBE MUNGAI.....GUARDIAN/APPLICANT

R U L I N G

By an order made on 14th May 2002, the court herein (Waki, J) appointed **JOSEPH KIBE MUNGAI** as the guardian of **RAMESH LILADHAR SHAH** (hereinafter called the **Patient**), to manage his affairs and estate. The court had found, after inquiry, the Patient to be suffering from mental disorder to such extent as to be incapable of managing his affairs. He was however capable of managing himself and was not dangerous to himself or to others, or likely to act in a manner offensive to public decency. The order was made under **section 26(3)** of the **Mental Health Act, Cap 248** (hereinafter called the **Act**).

The Applicant has now applied by chamber summons dated 24th September, 2009 that he be authorized, in the name and on behalf of the Patient, to sell the Patient's interest in the leasehold property, being **L. R. No. 209/178/29**, and for that purpose to execute such instruments and do such things as shall be settled and approved by the court. The leasehold property is owned jointly by the Patient and his wife, **HANSA RAMESH LILADHAR SHAH**.

The application is brought essentially under **section 27(1)** of the Act, which states in part:-

“27. (1) Where a manager is appointed under this Part, the court may order that the manager shall have such general or special powers for the management of the estate as the court considers necessary and proper, regard being had to the nature of the property whether moveable or immovable of which the estate may consist:

Provided that:-

- (i) A manager so appointed shall not, without the special permission of the court:-**
 - (a) mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise any immovable property of which the estate may consist;**

(b)

(c)

(ii)"

It is that “**special permission of the court**” that is sought in this application.

The application is supported by two affidavits, one sworn by the Guardian and the other by the aforesaid wife of the Patient. There are also some two further affidavits filed by order of the court. The first one was filed on 12th October, 2009 and it exhibits a current medical report on the Patient. It is sworn by the Guardian. The second further affidavit is a supplementary affidavit filed on 15th October, 2009. It is sworn by the wife of the Patient. It sets out the arrangements made for the abode of the Patient as the property sought to be sold constitutes his home.

From the current medical report, it appears that the Patient’s condition has never improved since the guardianship order was made on 14th May, 2002. At the order of the court, the Patient was brought to court at the hearing of the application. It was quite obvious that the Patient could not follow the proceedings and was totally unaware, and incapable of being aware, of what was going on around him.

Also upon order of the court, the Patient’s wife, **HANSA R. L. SHAH**, likewise appeared before the court. She came together with the Patient and their adult son, one **PUNIT RAMESH LILADHAR SHAH**, who lives with them. The Guardian was also present.

I am satisfied that since the guardianship order was made the Patient’s wife and their said son have taken good and unwavering care of the Patient, and would not do anything detrimental to his welfare. The property is sought to be sold because the properties surrounding it have now been developed mainly into commercial premises wherein bar, butchery, restaurant and other entertainment businesses are conducted. Because of the resulting noise pollution and other nuisances, living in the property has now become untenable. The family therefore seeks to relocate, initially to rented premises and eventually to other premises to be purchased.

I am satisfied, from the material placed before the court, that the proposed sale of the Patient’s interest in the leasehold property, L.R. No. 209/178/29 jointly owned by the Patient and his wife, and which now constitutes their home, will be in the best interests of the Patient and will not be detrimental to him. I will in the circumstances grant the “**special permission of the court**” sought in this application, and as prayed in prayer No. 1 of the chamber summons dated 24th September, 2009. There will be no order as to costs of the application. It is so ordered.

DATED AT NAIROBI THIS 28TH DAY OF OCTOBER, 2009

H. P. G. WAWERU

J U D G E

DELIVERED THIS 30TH DAY OF OCTOBER, 2009