



REPUBLIC OF KENYA

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

Misc Civ Casuse 49 of 2005

**IN THE MATTER OF : AN APPLICATION FOR CUSTODY,
MANAGEMENT AND APPOINTMENT OF A GUARDIAN**

AND

IN THE MATTER OF : THE MENTAL HEALTH ACT, CAP. 248 LAWS OF KENYA

AND

**IN THE MATTER OF : SIMON PETER KARANJA KIARIE
(A PERSON SUFFERING FROM MENTAL DISORDER)**

RULING

By a petition filed under the Mental Health Act, Cap. 248 Laws of Kenya, the petitioner/applicant Lydia Wangui, mother of the “subject” Simon Peter Karanja, sought an order of the court to be appointed a guardian of the said Simon Peter Karanja Kiarie on a permanent basis, and further, she prayed that she be accorded “custody and management of affairs of the said Simon Peter Karanja Kiarie.....”

Grounded on this petition was a chamber summons application filed under a Certificate of Urgency by Lydia Wangui Kiarie, seeking to be appointed “**guardian of Simon Peter Karanja Kiarie on an interim basis pending the hearing and determination of the petition herein**”.

Lydia also sought an order to be appointed “**guardian ad litem of Simon Peter Karanja Kiarie**”, for purposes of these proceedings.

The application had several other prayers as appear on the face of it.

Before the application could be heard, the subject’s father James Raphael Gakiri filed an application by way of chamber summons on 27th July, 2005, seeking to be “**added as a party in the current suit as an applicant**”. He also prayed to be allowed to file papers as a matter of urgency.

Lydia filed grounds of objection to this application on 1st August, 2005.

Ground 4 of the Grounds of Opposition reads,

“That James Gakiri Kiarie is not fit to act as guardian for Simon Peter Kiarie”, and ground 5

“That further to No. 4 above, the said James Raphael Gakiri Kiarie needs to first submit to a psychiatric evaluation to determine his suitability to act as Simon Peter Karanja Kiarie’s guardian in the present circumstances”.

Both parties filed further affidavits, as the record show.

In an effort to be fair to the father and mother of the subject, I made the following order on 25th October, 2005 so as to move this matter forward. I directed,

“both Lydia Wangui Kiarie the mother of the subject and James Raphael Gakiri Kiarie the father of the subject to file further affidavits and attach medical reports to show their “mental status”, as they both seemed to accuse one another of mental instability. Further they both separately wanted to take charge of the affairs of their son, the subject who is said to have some mental problem”.

At the conclusion of the hearing, I had 2 medical reports. One by Dr. M. Wangari Kuria, dated 9th November, 2005, prepared on behalf of Lydia Wangui Kiarie the mother of the subject, and the other dated 25th November, 2005, prepared by Dr. Fred Owiti of Arrow Medial Centre on behalf of James Rapheal Gakiri Kiarie, the father of the subject. The report, however, talks about the subject, and not the father, as I directed.

The medical report on the mother, on the other hand says at page 2,

“Mental state reveals a well-groomed lady of normal appearance. Her mood and speech is normal. Her memory, concentration and orientation is normal. She has no perpetual disturbanc..... physical she is normal with a blood pressure of 130/80 and a normal heart. In my opinion LYDIA WANGUI KIARIE is MENTALLY NORMAL and can be able to continue with her responsibilities in life.....”

Going by the medical evidence on record so far, I can say with authority that the subject’s mother Lydia Wangui Kiarie is **“mentally normal, to be able to continue with her responsibilities in life”**.

I have had no medical assessment of the subject’s father, despite asking for it. I cannot therefore declare him medically fit or otherwise for lack of evidence. However, given the fact that he is the subject’s biological father and further, given the **“sensitivity”** of this matter, I have decided that I will allow him to take part in the hearing of the application dated 26th July, 2005, filed in court on 27th July, 2005. This is the application where he is seeking to be **“added as a party to the current suit as an applicant”**.

I believe that the Judge dealing with the application is competent to determine the matter after hearing both parties. The issue of non production of a medical report on his mental status can be dealt with during the hearing.

I will therefore refer the matter back to the Family Division for the hearing of the application filed on 27.7.2005, or any other application and or the suit, as I only dealt with a point raised in the grounds of objection which has several other grounds, not yet argued.

Dated at Nairobi this 7th day of April, 2006.

JOYCE ALUOCH

JUDGE