



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. APPLICATION NO. 81 OF 2003

IN THE MATTER OF FRANCIS MWAURA KAMAU
AND IN THE MATTER OF THE MENTAL HEALTH ACT
CHAPTER 248 OF THE LAWS OF KENYA

JUDGMENT

On 5th September 2003 C W K (hereinafter called “the Petitioner”) petitioned this court seeking inter-alia for orders that:-

- 1 F M K (hereinafter called “the Patient”) be declared to be suffering from mental disorder as defined under the Mental Health Act (Cap 248) Laws of Kenya;
- 2 Management orders of the estate of the Patient be made;
- 3 The Petitioner be appointed as guardian of the Patient;
- 4 Such orders as may be necessary to preserve the interest and welfare of the Patient.

The Petitioner is the lawful wife of the Patient by whom she was blessed with three issues of marriage namely:-

- (a) C N K (born 19/10/65
- (b) H M K (born 26/3/67
- (c) E W K (20/2/86)

In support of her prayers in the petition the Petitioner has produced medical specialist evidence in documentary form indicating that the Patient has been diagnosed as suffering from dementia, a chronic mental illness characterized by memory loss and general intellectual decline. The Patient is consequently incapable of making informed and well thought decision of himself about his family and matters of his estate because of the distorted perception and ability to reason. The learned counsel for the Petitioner has in the circumstances aforesaid ably made a case for making of management orders of the estate of the Patient and including the appointment of a legal guardian. He has argued that it will be in the best interest of the Patient to make orders as prayed in the Petition, the Petitioner having undertaken to faithfully administer according to law all the estate which by law vests unto the legal guardian of the Patient in addition to rendering annual reports accompanied by just and true account of the said estate of the Patient.

I have heard the able submission of the said counsel for the Petitioner. I have scrutinized the three medical specialist reports submitted in respect of the Patient and in particular the report compiled by Professor Paul G. Kioy, a neurologist and neurophysiologist.

In his said report, the said Professor has confirmed that the Patient's present medical condition is irreversible and at best treatment remains cosmetic. According to the said report, the said Professor has duly certified the Patient as being **non-compos mentis**. I have perused the consents to this petition of the children of the Patient tendered under oath save that of C N K who has professionally been certified as being severely mentally challenged. I am convinced that this petition has been brought in the best interest of the welfare of the Patient and that the Petitioner is bona fide in her chosen prayers.

I am therefore satisfied that in pursuance of S. 2 of the Mental Health Act (Cap 248) read together with S.14(3) and in absence of rules yet to be enacted under the said Act, the Patient is as medically recommended a person suffering from mental disorder whose affairs and estate require immediate care attention and preservation. In furtherance of S. 26 and S.28 of the said Act, I accordingly appoint the Petitioner a Manager of the estate of the Patient. I further also appoint the Petitioner a legal guardian of the said Patient under the said Act.

In pursuance of the aforesaid appointment, the Petitioner shall henceforth ensure due compliance without exception with the provisions of S. 33 of the said Mental Health Act and inter-alia

(i) furnish this court and the Public Trustee with a complete inventory of all the properties including debts of the Patient within six(6) months of date of this appointment.

(ii) provide and furnish to this court and the Public Trustee annually and at any rate by 31st March of each year an account of the property in her charge showing sums received and disbursed on account of the Patient.

(iii) Submit to this court every six(6) months a medical report by Professor Paul G. Kioy or in his absence any other specialist of Professor Kioy's calibre in respect of the Patient.

There shall be liberty to apply but in respect of this ex parte proceedings, there will be no orders as to costs. It is so ordered.

DATED DELIVERED and SIGNED at Nairobi this 19th day of March 2004.

P. J. KAMAU

AG. JUDGE