



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KIAMBU**  
**PETITION NO. 17 OF 2020**  
**IN THE MATTER OF MENTAL HEALTH ACT**  
**IN THE MATTER GGSM (A PERSON SUFFERING FROM MENTAL DISORDER)**

**JUDGMENT**

1. My first instinct, when I considered this matter in March, 2021 was that the orders sought hereof are far reaching and needed to be heard by way of viva voce evidence. This has not been possible because the COVID-19 pandemic protocols do not permit face-to-face hearings. Because of that, I reviewed my orders of viva voce evidence and ordered for hearing by affidavit evidence. The hearing proceeded online.
2. What is before court is a petition filed by three people (petitioners) seeking for orders under the Mental Health Act for GGSM's (the subject) estate to be managed by them. The following are the prayers they seek:-
  - a. THAT the petitioners be appointed the managers of the estate of GGSM.
  - b. THAT the petitioners be appointed the guardians of the said GGSM.
  - c. THAT the petitioners be and are hereby given power to deal with the properties of the said GGSM including his businesses and bank accounts in the best interests of GGSM.
  - d. THAT the care, control and custody of the said GGSM is on the petitioners.
  - e. THAT the petitioners be allowed to institute suit to protect and distribute the estate of the said GGSM interests if need be.
3. One immediately notes that the above prayers are very far reaching and even leading to, if granted, the transfer of the subject properties, in what the subject refers to as "distribute". Distribution of an estate only takes place after death of the owner of the properties comprising that estate.
4. The petition is supported by an affidavit sworn by the petitioners. They depone they are members of the subject's family. Their exact relationship is not stated, except in the petition where CWM is stated to be the subject's daughter. Again, there is no clear information of who are the other children, if at all, of the subject.
5. The petition wholly fails to meet the threshold of the Mental Health Act Cap 248. I will try to set out the shortcomings. The petitioners, in the petition, state that the subject is a mental patient for whose benefit the petition is filed. That the subject is suffering from "senile dementia condition" which affects his memory language think, judgment and behaviour. That as a consequence the subject is incapable of managing himself and his affairs.
6. The petitioners produced two letters from the same doctor, Dr. Ian M. Kanyanya, dated 20<sup>th</sup> August, 2019 and 1<sup>st</sup> October, 2020. Both those letters are a reproduction of each other save for the date. Those letters indicate that the subject has been suffering from dementia since 2011. That he slightly improved after treatment "but over the last 5 years, his condition has progressively deteriorated greatly." The following is the doctor's opinion of the subject:-

**"OPINION**

**This patient is suffering from dementia. Dementia is a brain disorder of chronic and progressive nature in which there is deterioration in cognitive function (i.e. the ability to think coherently) beyond what might be expected from normal ageing. It affects memory, thinking, orientation, comprehension, calculation, learning capacity, language and judgment.**

**Consciousness is not affected. The impairment in cognitive function is commonly accompanied by deterioration in emotional control, social behaviour, or motivation. The results in progressive deterioration in the patient's reasoning planning and execution of tasks. Therefore, the patient becomes increasingly dependent on others for day to day decisions and care.**

7. Although the doctor stated, in the alternative, the subject began to suffer of dementia in 2011 and in the last 5 years (that is around 2014) began to deteriorate the petitioners attached a general power of attorney dated 22<sup>nd</sup> August, 2019 donated by the subject to one of the petitioners. It is not clear how, if indeed so, a person such as the subject suffering from mental ill health could donate a general power of attorney.

8. But I believe the one failure of the petitioners in presenting this petition is their failure to seek a declaration, under the Mental Health Act, for the subject to be declared to be suffering mental disorder. This is clear from the prayers of the petition reproduced above. No orders of guardianship or management can be made without that declaration . Petitioners are bound by their pleading which pleading is absent the prayer for such declaration.

9. The petitioners also fail to clarify why they filed this petition before this Court and not Muranga High Court when they themselves reside in Kandara, Muranga County, and when nine of the fifteen properties belonging to the subject are in Muranga County.

10. On the whole, I find the petition unmerited, one gets distinct feeling that there is some mischief in filing this petition which is not revealed by the petitioners. Accordingly, the petition is hereby dismissed with no orders as to costs.

**JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 6<sup>TH</sup> DAY OF JULY 2021**

**MARY KASANGO,**

**JUDGE**

CORAM:

Court Assistant : Ndege

For Petitioner : Ms. Mukonge

**COURT**

Judgment delivered virtually.

**MARY KASANGO**

**JUDGE**