



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISCELLANEOUS APPLICATION NO. 101 OF 2019
IN THE MATTER OF MMT
(A PERSON SUFFERING FROM A MENTAL DISORDER)

AND

IN THE MATTER OF JUDICIAL POWER OVER PERSONS AND ESTATES OF PERSONS SUFFERING FROM MENTAL DISORDER

AND

IN THE MATTER OF THE MENTAL HEALTH ACT (CAP 248) LAWS OF KENYA

SAMMY KURI THIMBA.....1ST PETITIONER/APPLICANT

KEVIN NGETHE THIMBA.....2ND PETITIONER/APPLICANT

KENNETH GIKONYO THIMBA.....3RD PETITIONER/APPLICANT

JOSHUA THIONGO THIMBA.....4TH PETITIONER/APPLICANT

MERCY KAMAU THIMBA.....5TH PETITIONER/APPLICANT

RULING

1. By a Chamber summons dated 16th June, 2019 brought under **sections 26(1) and (3) and section 28** of the **Mental Health Act (Cap 248) Laws of Kenya, sections 3A and 1A** of the **Civil Procedure Act** and all other enabling provisions of the law, the Petitioners/Applicants sought orders of the court that:

a) The Applicants be appointed jointly as interim guardians/managers of the estate and over the affairs of MMT (hereinafter the Subject) and thereupon to access, make enquiry, take inventory, invest and take control and manage all the estate of the Subject and in addition take all preservatory measures thereto pending the hearing and determination of the Petition.

b) The Applicants be granted special permission to dispose by way of selling the property known as Land Reference Number 10090/19 Juja in the name of the Subject and the proceeds thereto be used for her general care pending the hearing and determination of the Petition.

2. The application is premised on grounds that MMT is of advanced age at ninety-seven (97) years and suffers from serious intellectual deficit which by its nature causes progressive and relentless degradation of the brain. The Subject's condition requires close attention, constant medication and regular medical follow-ups. That as a result of the advanced age and associated dependency, the Subject's health, and personal affairs the estate require immediate care, attention and preservation.

3. In the supporting affidavit sworn on 16th June, 2019 by the 1st Petitioner/Applicant Sammy Kuri Thimba on his own behalf and on behalf of his co-applicants, he deposes that he and his co-applicants are the sons and daughter-in-law respectively of the Subject herein. He states that with the passage of time, their mother, the Subject herein, has become more dependent on them for the efficient management of herself and her estate. That while under their care, the Subject continues to accumulate huge medical bills on the money spent to purchase medicines and to attend regular medical check-ups for the Subject's well-being in addition to settling school fees of their sister-in-law's daughter. Save for these expenses, there are presently no known debts or liabilities owing to the estate.

4. The Applicants aver that before her infirmity, the Subject had through a Specific Power of Attorney dated 23rd June, 2015 appointed her five (5) sons, four of whom are the Applicants herein and one of whom has since died, to be her lawful attorneys with respect to her interests in the property known as Land Reference No. 10090/19. The said Power of Attorney is now void on account of the death of James Kamau Thimba, who was one of the attorneys appointed under the Specific Power of Attorney a copy of which is annexed to the affidavit.

5. It is the Applicants' case that in the circumstances, it is necessary that they are appointed managers over the Subject's estate to enable them manage her affairs and generate income that can be utilized in catering for her medical bills and upkeep.

6. The Applicants attached a medical report from Dr. Daniel K. Owino, a medical consultant at Mbagathi District Hospital, which states that the Subject was presented at the facility for examination and assessment citing a medical condition. The clinical impression was that the Subject was suffering from age-associated memory impairment which had impacted on her memory, thinking, language, problem-solving, personality and movement with severe cognitive decline. Further that she required assistance with most of her activities to wit toileting, eating, dressing, bathing, and other daily activities round the clock. She however had her psychomotor capabilities and was able to walk with significant assistance.

7. The doctor carried out a Standardized Mini-Mental State Examination (SMMSE) on the Subject on 30th May, 2019 and the Subject scored zero as shown in the assessment form attached to the report. The Subject was diagnosed with global cognitive deficits primarily affecting memory, attention and executive function (planning, problem solving, mental flexibility and abstract reasoning). The doctor recommended special preference as need arises with regard to her condition.

8. The Application was filed under Certificate of Urgency. On 19th June, 2019 the court certified the application urgent and directed that the matter be listed for hearing on 27th June, 2019 and that all the five (5) Petitioners were to attend the hearing.

9. All five (5) Petitioners were present in court at the hearing of the matter on 27th June, 2019. They told the court that the subject is their mother and lives with Mercy Kamau Thimba, the female Petitioner, at her home. They stated that there are no other siblings besides those who were present in court and that their father had died much earlier.

10. I have perused the pleadings filed in this matter, and in view of the expert opinion of Dr. Daniel K. Owino the Medical Consultant, I am persuaded that MMT, the Subject herein, is a person who is suffering from a mental disorder as envisaged under the provisions of the **Mental Health Act**. She is therefore incapable of taking care of herself and conducting her own affairs.

There being merit in the Chamber Summons dated 16th June, 2019, I hereby allow it in the terms proposed by the Petitioners/Applicants in prayers no. 2 and 3. It is so ordered.

SIGNED DATED and DELIVERED in open court this 4th day of July, 2019.

.....

L. A. ACHODE

HIGH COURT JUDGE