



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

MISC. APP. NO. 97 OF 2019

TWM.....1ST APPLICANT

JKM..... 2ND APPLICANT

VERSUS

WN.....PATIENT/RESPONDENT

RULING

1. The Application coming for consideration in this Ruling is the one dated 2.9.2019 seeking to vary the orders of this Court issued on 20.6.2019 in the following terms:

- i. THAT the Subject WN be and is hereby adjudged as a person incapacitated and incapable of making her own decisions.**
- ii. THAT the Applicants TWM and JKM be and are hereby appointed as guardians and managers of the Estate of the subject WN.**
- iii. THAT the Petitioners TWM and JKM be and are hereby authorized to access, transact, operate, withdraw and utilize the funds held by the subject in two bank accounts No. [xxxx] (Transitional Account) and [xxxx] (Fixed Deposit Account) held with Co-operative Bank at Karatina Branch in the name of the subject WN.**
- iv. The funds to be paid to MERIDIAN EQUATOR HOSPITAL to clear the Hospital Bill.**

2. The Application is supported by Affidavit of TWM and JKM in which they have deposed that the orders gave specific orders to pay funds to Meridian Equator Hospital to clear the Hospital Bill.

3. They further deposed that there has been change of circumstances as the patient has now been transferred to Kenyatta National Hospital to continue with treatment.

4. The Applicants are now seeking to have the orders set aside as they have restricted, prevented, and stopped them from catering the medical expenses of the patient and further, the said orders have restricted the bank from releasing funds to Kenyatta National Hospital.

5. The Applicants also said they had borrowed funds from third parties, which they are required to repay. They filed an affidavit when attached evidence of transaction with third parties. I have considered the Affidavit in support of the Application dated 2.9.2019 together with the documents in support of the said Applicant. I find the consent of all the family was obtained.

6. Section 2 of the Mental Health Act defines "person suffering from mental disorder" as follows" means a person who has been found to be so suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse."

7. Part XII of the Mental Health Act provides for judicial power over persons and estates of persons suffering from mental disorder. The said section provides as follows:-

26. Order for custody, management, and guardianship

(1) The court may make orders—

(a) For the management of the estate of any person suffering from mental disorder; and

(b) For the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person.

(2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.

(3) Whereupon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder.

8. In view of the changed circumstances of this case the orders of this court are reviewed as follows;

i. THAT the Subject WN be and is hereby adjudged as a person incapacitated and incapable of making her own decisions.

ii. THAT the Applicants TWM and JKM be and are hereby appointed as guardians and managers of the Estate of the subject.

iii. THAT the Petitioners TWM and JKM be and are hereby authorized to access, transact, operate, withdraw and utilize the funds held by the subject in two bank accounts No. [xxxx] (Transitional Account) and [xxxx] (Fixed Deposit Account) held with Co-operative Bank at Karatina Branch in the name of the subject WN to pay hospital bills and to meet other expenses in respect of the subject.

iv. THAT the Costs to be paid by the Petitioner/Applicants

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 4TH DAY OF OCTOBER, 2019.

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.