



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. 72 OF 2017

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

AND

IN THE MATTER OF S H G (A PERSON SUFFERING FROM MENTAL DISORDER)

AND

IN THE MATTER OF SELECTION OF GURADINA OF S H G AND MANAGER OF HIS ESTATE

RULING

1. I dismissed the petition herein on 30th June 2017, on two principal grounds. The first was that the petitioner did not present himself to court to prosecute the petition. Instead he sent his aunt, but without a power of attorney. Secondly, the medical records presented in support of the petition were not recent as they were dated back to 2012.
2. The petitioner then moved the court by a Motion dated 20th July 2017, seeking review of the said dismissal order. It was principally argued that the petitioner had since obtained up-to-date records. I heard the Motion on 2nd November 2017 and allowed it. I directed that the petitioner be availed to testify in his case.
3. The hearing happened on 7th December 2017. The petitioner attended court and testified, largely breathing life to the averments made in his petition and in his affidavits. He produced a medical report by DR MO Okonji dated 25th June 2017. The subject was himself presented before me on 13th December 2017. He was able to address the court, but I did note that the answers that he gave to the questions I posed to him were in mono-syllables.
4. According to Dr Okonji, he last attended to the subject on 25th June 2017. He noted that the subject's condition was deteriorating, and concluded that he was unable neither to look after himself nor to make rational decisions.
5. The Mental Health Act is the law governing handling of persons who are suffering from mental disorder or sub-normality in Kenya. It also provides for custody of such persons and the management of their estates. Part XII of the Act deals with the judicial power over persons and estates of persons suffering from mental disorder. Section 26 of the Act specifically provides for orders for custody, management and guardianship of such persons and their estates.
6. The petition before me asks the court to adjudge the subject to be a person suffering from mental disorder and to thereafter appoint the petitioner guardian for the subject, as well as manager for his estate. From the material before it is clear that the subject is no longer able to manage himself and his affairs on account of mental disorder arising from the condition that has been documented in the medical report by Dr. Okonji referred to above.
7. I am satisfied that a case has been made out for the appointment of the petitioner as manager of the estate of the subject, who I have found to be suffering from mental disorder, and to act too as his guardian.
8. The appointment above puts the petitioner in a fiduciary position so far as the subject and his estate is concerned. He is a trustee so to speak. The petitioner is consequently bound to account to both the court and the subject, should he recover and require an account of the management of his estate.
9. The orders that I feel bound to make in the circumstances are:-

(a) That the subject, S H G, is hereby adjudged to be a person suffering from mental disorder;

(b) That the petitioner herein, S H G, is hereby appointed guardian of the said subject;

(c) That the said petitioner is also hereby appointed manager of the estate of the subject;

(d) That in exercise of the duties concomitant with the appointments in terms of orders (b) and (c) above the petitioner shall have the powers that are set out in prayer (b) of the petition dated 11th May 2017; and

(e) That the petitioner shall place before court at the expiry of three (3) months from date hereof a full and accurate account of his handling of the estate of the subject.

10. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 2ND DAY OF FEBRUARY, 2018.

W. MUSYOKA

JUDGE