



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC CIVIL APPLICATION NO. 102 OF 2018

IN THE MATTER OF: A PETITION FOR THE APPOINTMENT OF A GUARDIAN/MANAGER FOR J W G AND HER ESTATE

IN THE MATTER OF: J W G (A PERSON SUFFERING FROM MENTAL DISORDER

IN THE MATTER OF: THE MENTAL HEALTH ACT, CAP 248 LAWS OF KENYA

J W G.....PETITIONER

- V E R S U S -

P W G.....1ST INTERESTED PARTY

P K K.....2ND INTERESTED PARTY

P T G.....3RD INTERESTED PARTY

RULING

1. Pursuant to the provisions of Sections 26, 27, 28, 29, 30, 31, 32 and 33 of the Mental Health Act, J W G, the petitioner herein took out the motion dated 2nd February 2018 in which she sought for inter alia:

1. Spent

2. Spent

3. Spent

4. THAT an order be granted appointing the petitioner/ applicant as the guardian and manager of J W G pending the hearing and determination of the petition.

5. THAT further and other orders be granted to ensure and facilitate compliance with the Mental Health Act pending the hearing of this petition.

6. THAT the costs of this application be in the cause.

2. The motion is supported by the affidavit of J W G. The petitioner named P W G, P K K and P T G, her siblings, as interested parties. When served with the motion the 3rd interested party filed a replying affidavit to oppose the application.

3. When the motion came up for interpartes hearing, learned counsels appearing in this matter recorded a consent order to have J W G, herein referred to as the “subject” subject examined by Dr. Mutiso. Learned counsels further agreed to have the motion disposed of by written submissions. Dr. Mutiso proceeded to examine the subject after which he filed with this court his report dated 22.2.2018. I have considered the grounds stated on the face of the motion plus the facts deponed in the affidavits filed in support and against the application. I have further considered the rival written submissions. It is the submission of the petitioner that the subject is currently in need of medical care and protection. The petitioner has further argued that the subject is staying alone at her farm therefore she is exposed to harm and anger. This court was informed that the subject has a medical condition which requires the urgent intervention of the court to authorise the petitioner to intervene in accordance with the Mental Health Act for the health and welfare of the subject. The petitioner argued that she is the only one who is suitable to be appointed a guardian and to provide care, protection and management of the subject at the moment. The petitioner alleged that her mother, the subject herein, has been ailing since 1987 when she was diagnosed with Schizophrenia. It is stated that in 2015,

a dispute arose between the interested parties and the petitioner when the interested parties purportedly took over the care and management of the subject. She alleged that her mother has been neglected for almost a year and she discovered that in 2017 she was not taking her mandatory medication. The petitioner stated in detail that the interested parties were very busy therefore they are unable to devote quality time with the subject.

4. In response to the petitioner's averments, the interested parties filed the replying affidavit of P G, the 3rd interested party who pointed out that the medical report relied upon by the petitioner was overtaken by events. The 3rd interested party stated that in the opinion of the doctor dated 14.2.2018 it is indicated that the subject does not suffer from any mental disorder. He further pointed out that the subject has been taking medication for schizophrenia between 1993 and 2015. The interested parties stated that at the beginning of the year, they took the subject to Bustani Medical Centre where a second medical opinion was sought which confirmed that the subject has no mental disorder but is severely aggravated by the family conflict constantly raised by the petitioner. They also alleged that the petitioner sought to coerce the subject into selling her property and withheld from her part of the purchase proceeds without her consent. They also argued that it is evident that during the petitioner's stay she sought to financially benefit from the subject's estate. The interested parties argued that they have all actively been involved in caring and supporting their mother and that she has rental income and pension hence she is not financially dependent on any child.

5. Having carefully considered the arguments and the material placed by both sides before this court, it is clear that both sides do admit that the subject has been undergoing medication for a while in mental health facilities. The medical reports filed in this court by various doctors do not expressly state that the subject is of unsound mind nor incapable of managing her affairs.

6. The question as to whether or not the subject is incapable of managing her affairs in the unique circumstances of this case only be determined after hearing the substantive petition.

7. The interested parties have annexed to the replying affidavit of P G, copies of a plaint and a verifying affidavit showing that the petitioner had filed a suit before this court in which she sought for near similar orders as those sought in this petition. In the aforesaid suit, the court is said to have ordered the subject to undergo mental examination whose results found the subject to be of sound mind and capable of managing her affairs. The suit i.e H.C.C.C. no. 150 of 2015 was heard and dismissed by Lady Justice Aburili. I have also examined the medical report filed by Dr. J. K. Mutiso dated 22.2.2018 and it is clear that the aforementioned doctor did not make conclusive findings. He merely suggested for further medical tests and investigations.

8. In my humble view, I am not satisfied that the petitioner has made out a case to enable this court grant her the orders sought. Consequently, the motion dated 2nd February 2018 is found to be without merit. It is dismissed with each party bearing his or her own costs.

Dated, Signed and Delivered in open court this 7th day of March, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Petitioner

..... for the Interested Parties