



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
MISCELLANEOUS APPLICATION NUMBER 99 OF 2018
In The Matter Of J W L
(PATIENT/SUBJECT)
L A M L..... PETITIONER

RULING

The Applicant, **L A M L**, only surviving son of the patient/subject, **J W L**, filed petition under **Section 26, 27 and 28 of the Mental Health Act Cap 248** and he sought to be appointed legal guardian of **J W L** and legal manager of his estate.

The subject, **J W L** suffered a stroke on 4th December 2015. The Kakamega County General Hospital medical report of 4th December 2015 by Dr.Biko diagnosed the patient as presented inability to walk and the right side of the body [had/has] weakness. The Head CT scan done revealed acute impact on the MCA territory. The results of the CT scan by Dr. Andambi Radiologist annexed to the Hospital report confirmed the diagnosis. The report confirms that the subject experiences considerable difficulties in carrying out day to day activities and requires constant and necessary support. He suffers from physical and mental incapacity that hinders mobility, decision making and conduct of his affairs and ensuring his wellbeing.

The Petitioner, **L A M L** swore affidavit on 25th July 2018 and stated he is only surviving child and son of the patient **J W L** and his father has been ill since 2015 when he suffered a stroke and he cannot speak or walk or do anything on his own. He requires constant care and support and medical attention. He seeks to be appointed the subject's Legal Guardian so as to facilitate constant care and support for the Subject.

His medical expenses have sky rocketed over time and he is unable to sustain payment of medical bills as the amounts continue to increase. The Petitioner seeks to be appointed Legal Manager of the Subject's estate and to access the Subject's account at **Kenya Commercial Bank (KCB) Kencom Branch Nairobi Account Number [particulars withheld]** to withdraw funds for the sole purpose to settle the current medical bills incurred by the subject. He will also manage the subject's other assets for his upkeep and maintenance.

DETERMINATION

From the foregoing, the issue(s) that are to be determined by the Court are:-

1. Whether the Subject should be declared as suffering from mental disorder pursuant to the Mental Health Act, Cap 248.

2. Whether the Petitioner should be appointed legal guardian to the subject as well as legal manager of the estate of the subject.

The Mental Health Act provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons. **Section 26 of the Act** grants the Court powers to grant orders for management of the estate of subjects and for their guardianship by any near relatives or any suitable persons.

Section 28 of the same Act provides for management of the subject's estate. The subject shall require funds to facilitate and ensure provision of medical care, nutrition, hygiene and upkeep. The Petitioner / Applicant will facilitate care and support to the subject and avail adequate medical care.

Section 26(3) of the Act provides,

“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 persons, including proper provision for his maintenance...”

From the evidence produced by the Petitioner, the Medical Report on record, it is not disputed that the Subject is suffering from a mental disorder resulting from a stroke; he cannot talk or walk; a medical condition contemplated under **Section 26 of the Mental Health Act**.

This Court is satisfied that the Petitioner has made out the case in support of the Petition that the subject suffers from a medical condition resulting from the stroke that results in mental incapacity and immobility requires care and attention for his wellbeing.

Therefore, since the subject due to medical circumstances will require continued support and assistance in medical, financial, subsistence and in day to day activities throughout his life, his son; the only surviving child and member of the immediate family as the 4 siblings and their mother are deceased as confirmed by Chief of Malava; Chief's letter of 20th July 2016 annexed; the Petitioner has in this matter sworn affidavit and consented to taking care of the subject.

DISPOSITION:

In light of the above, the Court holds that:-

i. J W L (the Subject) is hereby declared to be suffering from mental disorder resulting from a stroke and immobility pursuant to Section 26 of the Mental Health Act, Cap 248 Laws of Kenya.

ii. L A M L is hereby appointed the legal guardian to J W L.

iii. L A M L is hereby appointed manager of the estate of J W L under Section 28 of Mental Health Act to access Kenya Commercial Bank (KCB) Kencom Branch Nairobi Account Number [particulars withheld] of the patient J W L and to manage his estate.

DELIVERED DATED SIGNED IN OPEN COURT IN NAIROBI ON 11TH OCTOBER, 2018.

M.W. MUIGAI

JUDGE FAMILY DIVISION OF HIGH COURT

IN THE PRESENCE OF;

MS OCHIENG FOR APPLICANT