



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PETITION NO. 115 OF 2018
IN THE MATTER OF P M S (PATIENT/SUBJECT)

AND

SECTIONS 26 - 39 THE MENTAL HEALTH ACT (CAP 248) LAWS OF KENYA

G J G SPETITIONER

RULING

The Petitioner herein; G J G S presented a petition dated 15th August 2018 as follows:-

- i. The patient P M S is currently residing in an Elderly Persons Nursing Home in Hardy Estate Langata, and has for the last four years been suffering from dementia and has been incapable of managing her affairs.
- ii. The Petitioner seeks that this Court do inquire concerning the alleged incapability of the Patient managing her affairs.

The Petition is supported by an application by way of Chamber Summons seeking the following orders:-

- a. That the Petitioner G J G S, stepson of the patient is appointed legal guardian of the patient/subject and legal manager of the patient's estate.
- b. That the Petitioner /Applicant manages the affairs of the Patient by maintaining adequate health care and support for the patient's well-being; and in particular to have the power to operate the **Patient's Bank Account at Eco Bank Kenya Limited (details of Account not disclosed)** to pay her expenses and medical bills at the Elderly Persons Nursing Home at 89, Koitibos Road, Hardy Estate, Langata Nairobi.
- c. That the cost of these proceedings and matters incidental thereto be paid from the Estate.

The petition is based on affidavits with supporting facts and evidence. The affidavit of the petitioner was sworn on 15th August, 2018. In his affidavit he averred that the Patient is aged 85 years and started to exhibit signs of dementia in 2013. He further stated that the Patient evidences confusion, inability to understand, does not speak coherently, and has disorientation, memory loss, unable to read and write and/or make any decisions and is unable to take care of herself and needs assistance at all times and she has been under the full time care at a Nursing Home at 89, Koitibas Road, Hardy Estate, Langata. The Patient lacks the ability to conduct her affairs.

The Petitioner's Counsel prosecuted the petition on 4th October, 2018; and gave vent to the averments made in the pleadings lodged in court in support of the case.

The Petitioner placed on record a medical report of the patient to support his case. The medical report by Dr J W Kitulu dated 13th June 2018 provides that;

On examination/observation [he] found an elderly lady, well kempt in animated conversation with her carer Sr. Emily and her stepson G S. She could not say her full name, nor time of day, date of birth or where she was at present or where she was born in the past. She could not name her stepson or even nurse carer or even her late husband. She did not know what she had for tea.....An attempt to administer the minicog test which is an assessment for dementia was made and she was totally unable to do the test.....Her conversation was quite incoherent with a lot of confabulation.

In the Report the doctor concluded that from his observation, he confirmed that the Patient has dementia and is not capable of managing her personal affairs. Dr J.W.Kitulu swore an affidavit dated 15th August 2018 stating that it was his view that the Patient is not capable of

looking after her affairs due to her mental condition and that it is right and proper that she obtains support. Therefore, a legal guardian is to be appointed to ensure the patient's well-being and manage her affairs.

THE LAW

Section 26(3) of Mental Health 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...”

I am satisfied from the Doctor's Report that the patient is no longer able to manage herself and her affairs on account of mental disorder arising from the conditions that are documented in the medical report by Dr J.W. Kitulu referred above. I am also satisfied that a case has made out for the appointment of the petitioner, as Legal guardian of the patient and legal manager of the estate of the patient, who is found to be suffering from mental disorder, and to act too as her guardian.

- a. That the patient, P M S, is hereby declared to be a person suffering from mental disorder; Pursuant to Section 26 of Mental Health Act, Cap 248 Laws of Kenya;**
- b. That the petitioner herein, G J G S, is hereby appointed Legal guardian of the said patient; P M S;**
- c. That the petitioner herein, G J G S, is hereby appointed Legal manager of estate of P M S and her affairs; pursuant to Section 28 of Mental Health Act Cap 248 Laws of Kenya.**
- d. The Petitioner G J G S as legal manager shall access the patient's/subject's Account at Eco Bank Kenya Limited to defray medical bills and expenses incurred by the Patient.**

DATED, SIGNED and DELIVERED at NAIROBI this 11TH DAY OF OCTOBER, 2018.

M.W. MUIGAI

JUDGE FAMILY DIVISION- HIGH COURT

IN THE PRESENCE OF;

Ms. Karanja holding brief for Ms. Jan Mohammed for Applicant