



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI FAMILY DIVISION**

**MISCELLANEOUS APPLICATION NO. 128 OF 2018**

**IN THE MATTER OF E O W.....(A PERSON OF UNSOUND MIND)**

**AND**

**IN THE MATTER OF N C.....APPLICANT**

**RULING**

1. Before Court is an application dated 13<sup>th</sup> September 2018 filed under Certificate of urgency by one N C of California, U.S.A. The application seeks for several orders as follows;

1. ...

***2. That the honourable Court be pleased to make a determination that E O W (alias E W, E O W – G is a person suffering from mental disorder.***

***3. That the Honourable Court directs the immigration Department to reconstitute the travel documents of E O W to facilitate her return to Kenya.***

***4. That the Applicant herein, N C a niece of E be declared her guardian ad litem.***

***5. That the Honourable Court be pleased to appoint N C, to manage the estate of E O W.***

***6. That a medical analysis be conducted both in France and Kenya to ascertain the mental status of E.***

***7. Proceeds from assets of E be used to cater for her maintenance and medical expenses.***

***8. That four children that E took care of, domiciled in Canada and elsewhere, be restrained from meddling with the assets.***

***9. The said E be repatriated back to Kenya to live among family who will provide care for her.***

2. The application is predicated upon grounds that; the applicant discovered that the subject who resides in France has developed severe progressive dementia since about 2014 – 2015, is in need of urgent intervention by family and immediate medical attention; that though E, the subject did not have children of her own, she took care four children(‘children’) who have neglected her; she has no family in France who can provide for her and it is necessary for her to return to Kenya which the applicants seeks to do.

3. In an affidavit witnessed on 7<sup>th</sup> September 2018, the applicant states; that on 4<sup>th</sup> July, 2018 she visited the subject and found her in bad condition, she looked for the children whom the subject had looked after but they declined to assist. The applicant has since employed a care giver, and got treatment for the subject. Further the applicant deposes, the subject has misplaced her Kenyan passport and for purposes of relocating back home, the subject requires travel document.

4. The applicant further proposes that she be appointed a guardian and a manager of the subject’s assets and that proceeds from the said assets be used to maintain and take care of the subject, as the subject’s “children” are restrained from interfering with the same.

5. Several documents were annexed as a bundle marked ‘NCI’ which include photographs, email correspondences, medical analysis and a list of assets.

6. The medical analysis attached indicate that the subject is in need of both medical care and attention. And from the averment of the applicant the subject who is a residence of Paris France is on her own and not able to take care of herself.

7. Allegations were made against the subject's 'children' who are said to have neglected her. The said children whose names are given as R (Vancouver), R K (Kenya), (Charissa) L and V (Mississippi), were not served with pleadings before Court. Yet the court is being asked to make adverse orders against them. R K was present in Court, notable though is that he sat quietly oblivious of the allegation against him and his 'siblings', it is not clear whether he had been served with the Court papers.

8. For the court to make serious orders being sought for, it is imperative that all persons of interest and those being adversely mentioned be served with the pleadings before court.

9. Notable also is that the applicant resides in California, U.S.A and it is not clear how she will provide care and attention to the subject in Kenya. However, the Court is prepared to certify the matter as urgent so as to allow the applicant to travel to Kenya due to her health condition.

10. For the reasons above the court directs and order as follows;

*a. G W C, R G and N C be and are hereby appointed as interim legal guardians of the subject E O W alias E W alias E W G, until the matter is fully heard and determined.*

*b. That the three interim legal guardians jointly and/or severally be at liberty to facilitate and/or make arrangements for the said E O W alias E W alias E W G, to travel to Kenya.*

*c. The Kenyan Embassy in Paris, France with the aid of the Kenyan immigration department do facilitate the subject's travel to Kenya.*

*d. The relatives, children, their servants and/or agents are all restricted and restrained from intermeddling with the Estate of the Subject until further orders of the Court.*

*e. The 'adopted children' of the subject namely R, R G, C and V, sisters and nieces of the subject be served with the pleadings herein for inter parte hearing.*

**Dated, Delivered and Signed at Nairobi this 12<sup>th</sup> day of November 2018.**

**ALI-ARONI**

**JUDGE**