



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISCELLANEOUS APPLICATION NUMBER 10 OF 2018**

**IN THE MATTER OF AN APPLICATION BY CAO**

**AND**

**IN THE MATTER OF DAO**

**AND**

**IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA**

**RULING**

1. By way of notice of motion dated 20<sup>th</sup> July, 2018 and filed in court on 20/7/2018 CAO (applicant) seeks orders;

- 1. THAT this application be certified as urgent, service be dispensed with and heard ex-parte in the 1<sup>st</sup> instance.**
- 2. THAT this Honourable Court be pleased to appoint the Applicant herein guardian of the said DAO.**
- 3. THAT this Honourable court be pleased to place the care, control and custody of the said DAO under the Applicant herein.**
- 4. THAT this Honourable Court do issue an order allowing the Applicant herein to manage all the affairs of DAO.**

2. The application is predicated on the supporting affidavit of the applicant and on grounds;

- a. DAO is mentally indisposed and incapable of managing her own affairs.
- b. The medical evidence shows that DAO is suffering from Cerebral Palsy Spastic type as well as Convulsive disorder due to cerebral palsy as a consequence of where her intellectual performance is below average not as expected.
- c. Similarly DAO is a person living with disability as confirmed with NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES which has made her completely immobile.
- d. The said DAO is not expected to recover from her present condition.
- e. As a consequence of the foregoing the said DAO is incapacitated to make competent decisions with respect to the estate.
- f. The Applicant, being the sister, undertakes to properly and diligently take care of the said DAO.
- g. The other siblings of DAO have consented to the appointment of the Applicant.
- h. It is in the best of the estate that the Appointed manager thereof.

3. The gist of the application is that DAO (subject) is a sister to the applicant. Medical evidence presented as an annexure to the supporting affidavit shows that she is known to have cerebral palsy spastic type. She also has a convulsive disorder which is most likely due to cerebral palsy.

4. Annexed to the supporting affidavit too, is evidence of registration of the subject with the National Council For Persons With Disabilities.
5. The applicant avers that as a consequence of the foregoing, the subject is incapacitated to make competent decisions with respect to her affairs. She is incapable of signing the consent to confirmation of a grant in a matter before court that affects her.
6. The applicant undertakes, as a sister to the subject, to properly and diligently take care of the subject.
7. A consent by the other siblings of the subject is duly signed and filed herein.
8. I have carefully considered the application and the evidence in support thereto. It is clear that the subject is afflicted by illness to an extent that she is incapacitated to make competent and rational decisions in respect of her affairs.
9. The other persons close to her in life are siblings who have consented to the applicant who is a sibling to taking care of the affairs of the subject.
10. I am satisfied that the orders sought are merited and in the best interests of the subject.
11. I allow the notice of motion dated 20/7/2018 in terms of prayers 2, 3 and 4. Costs of the motion shall be in the cause.

**Dated and Delivered at Nakuru this 13<sup>th</sup> day of December, 2018.**

**A. K. NDUNG'U**

**JUDGE**