



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS 143 OF 2016**

**P W K .....APPLICANT**

**H W N.....SUBJECT**

**UNDER THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA**

**RULING**

The Applicant P W K on 2nd November 2016 and 29th November 2016 filed under certificate of urgency notice of motion application brought under **Section 26, 27, & 29 of The Mental Health Act Cap 248** and sought to be appointed legal guardian to the subject H W N and manager of the subject's estate.

The Applicant, biological daughter of the subject deposed in her supporting affidavit that the subject suffers from dementia and has not been able to take care of herself, manage her affairs and or make decisions for herself.

Dr. Mareko Machanga Consultant Psychiatrist's medical report dated 26th November 2016 states the following; after examination and observation of the subject who is an elderly lady wheelchair bound;

***no rational speech function...not oriented in place or time memory absent judgment poor abstract thinking poor and thought process poor.***

The diagnosis is severe dementia and the doctor's opinion is;

***This lady suffers from severe dementia with poor memory, speech and judgment. Consequently, she is mentally incapable of making rational decisions***

There is also letter from PCEA Kikuyu Hospital dated 18th October 2016 by Dr. Kaburu who diagnosed the subject with senile dementia.

The Applicant filed the Chief's letter of 23rd November 2016 from Chief PETER. N. NDUNGU of Gitaru Location Kikuyu that confirmed that the subject is a mother to 3 children; namely;

**P W K ID [Particulars withheld]**

**M N C ID [Particulars withheld]**

**L N N ID [Particulars withheld]**

The members of the family consented to this application. L N N who resides abroad sent signed consent to the Application.

The Applicant sought orders for guardianship over her mother the subject because, she owns the suit property [Particulars withheld] which was fraudulently transferred to one ANNIE MUTHONI WAKANYI as shown by the attached copy of the green card that confirms the subject of the owner of the property.

The said Annie Muthoni Wakanyi deposited building materials on the suit property as shown by photographs attached to the application. Due to the subject's mental infirmity she is unable to manage herself and her affairs to protect her interests over the property by filing suit against the encroachers.

### **DETERMINATION**

The **Mental Health Act** is in place to ensure that individuals who suffer from mental illness are well cared for and their estates are properly handled. The **Mental Health Act**, at **Section 26** provides that:

*(1) The court may make orders—*

*(a) for the management of the estate of any person suffering from mental disorder; and*

*(b) for the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person.*

*(2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.*

*(3) 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 person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder.*

From the evidence provided to this court the Applicant's request for appointment as legal guardian is to be able to provide adequate care to the subject and ensure her well being. The Applicant is the daughter of the subject authorized by siblings and family of the subject to obtain orders appointing her legal guardian of the subject and manager. The Applicant has demonstrated through medical evidence from doctors who attended to the subject that she is not in proper mental position to take care of her affairs and her welfare.

The Applicant sought from this Court the relevant orders to be appointed manager of the subject's estate so as to pursue her rights over the suit property [Particulars withheld] cater for her upkeep and well being.

It is in the subject's best interest that the Applicant is appointed as her legal guardian and manager of her estate to settle the medical expenses and to ensure that funds are available for her upkeep and further medical attention in the future.

### **DISPOSITION**

In the circumstances the Court is satisfied of the subject's condition and circumstances and holds as follows:

**(a) H W N is hereby declared as suffering from a mental disorder under Section 26 of the Mental Health Act (Cap 248).**

**(b) P W K is hereby appointed under section 27 of the Mental Health Act as the Manager of the estate of H W N**

**(c) P W K daughter to the subject is hereby appointed legal guardian of H W N.**

**DELIVERED SIGNED & DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2017.**

**M. W. MUIGAI**

**JUDGE**

**IN THE PRESENCE OF:**

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