



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY AND PROBATE DIVISION

MISC. APPLICATION NO. 12 OF 2017

IN THE MATTER OF K M (A PERSON SUFFERING FROM MENTAL DISORDER)

N M.....1ST PETITIONER

G D.....2ND PETITIONER

R U L I N G

1. By a Chamber Summons dated 15th January, 2017 brought under **Sections 1A, 3A** of the of the **Civil Procedure Act** and **Sections 26 (1) 28** of the **Mental Health Act (Cap 248) Laws of Kenya**, by the Petitioners, they sought orders of court that:

a) Pending the hearing and determination of the petition, the court do appoint **N M** and **G D** as interim guardians/managers of the patient's estate and to thereupon access, make enquiry, take inventory, take control of all his assets and in addition take all necessary preservative measures thereto.

2. The application is premised on grounds that **M K M** (hereinafter the Subject) suffers from Alzheimer's disease, a condition associated with relentless decline in intellectual function to a point where he cannot handle his transactions. That owing to the nature of his illness the Subject is unable to look after his affairs and is incapable of independent intellectual judgment.

3. It is stated that the first Applicant is the blood brother to the Subject and he is therefore in a good position to manage the Subject's estates in the Subject's best interest. That the second Applicant is a close friend to the Subject and is resident in Kenya and is therefore able to jointly manage the subject's estate together with the first Applicant.

4. It is urged that the Subject's estate stands to suffer irreparable loss and damage if the Applicants are not appointed.

5. In a supporting affidavit sworn on 20th December, 2016 the deponent **N M** depones that he and **L H M** are brothers of the Subject and the said **L H M** does not have any interest in the Subject's affairs.

6. Dr. Okonji a Consultant Psychiatrist at the Nairobi Hospital, Doctors Plaza testified in court and stated that he had had occasion to examine the Subject on the 21st September, 2016 and 25th October 2016 respectively. That the Subject had presented with progressive memory loss when examined. That though fully oriented in place he was not oriented in time. He was observed to repeat the same topics and had difficulty finding appropriate words. Both the short and long term memories were grossly impaired.

7. The MRI scan of the brain done on 18th October, 2016 showed that the Subject and features of brain atrophy and hydrocephalus. The Dr. observed that with this condition which is irreversible he is incapable of looking after himself or his estate. He likewise has no testamentary capacity.

8. The Applicant had attached to his application a medical report by Dr. Okonji which the Dr. confirmed was his opinion. The Dr. diagnosed the Subject as having dementia, a condition which leads to impaired functions of brain cells.

9. Having perused the pleadings filed in this matter and heard the submissions of learned counsel Mr. Anyona for the Applicant, and in view of the expert opinion of the Consultant Psychiatrist, I am persuaded that the Subject is a person who is suffering from mental disorder. I find therefore that he is not capable of taking care of himself and conducting his own affairs.

10. The Petition dated 18th January, 2016, which is not contested is therefore allowed and the court hereby appoints **N M** and **G D** as interim guardians/managers of the patient's estate and to thereupon access, make enquiry, take inventory, take control of all his assets and in addition take all necessary preservative measures thereto.

SIGNED DATED and DELIVERED in open court this 9th day of February 2017.

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Applicants