



IN THE HIGH COURT OF KENYA AT MURANG'A

PETITION NO 9 OF 2016

IN THE MATTER OF KG (SUBJECT)

AND

1. MNG

2. GWG

3. TMG.....PETITIONERS

RULING

1. The petition herein dated 21/10/2016 seeks the main orders –

(a) That the Petitioners **MNG, GWG** and **TMG** be appointed as guardians of the Subject, **KG**.

(b) That the Petitioners be also appointed managers of the Subject's estate with general powers to manage the estate as well as all his other affairs (including his business matters, legal transactions and other dealings and affairs) in Kenya and elsewhere.

2. The Petitioners are the Subject's sisters and brother. They have deponed that the Subject has been handicapped both mentally and physically from birth and has had to depend upon his family for all his needs. He is without wife or issue, and is not capable of taking care of himself and his affairs.

3. The orders of *guardianship* and *management* are sought principally because the Subject is one of the beneficiaries in *Murang'a HC Succession Cause No 494 of 2014 (In the matter of the Estate of GK ((alias F GK)), Deceased)* which is pending confirmation of the grant therein. It is expected that the Subject will there come into some property by way of inheritance, and the orders sought are necessary in order to take care of him and his property.

4. The petition is brought under **sections 26 and 28** of the *Mental Health Act, Cap. 248*.

5. Apart from the Petitioners' affidavits supporting the petition, there are three other affidavits. One is by the Subject's other sibling, **JNG**. She supports the orders sought. The second affidavit is by one **Benson Mwangi Mungai**, the Assistant Chief of the area where the Subject and his siblings hail from. He has known the Subject for over 30 years, and that he has been in that incapacitated condition throughout.

6. The third affidavit is by one **Dr Fredrick Richard Owiti**, a consultant psychiatrist. He has annexed to his affidavit a **medical report** on the Subject **dated 24/08/2016** that he prepared after examining him. Dr Owiti has reported that the Subject has got a seemingly small head (microcephaly) and an abnormally developed jaw that leaves his mouth open and drooling saliva all the time. He does not have the ability "to verbalize or communicate/pronounce words clearly".

7. The doctor also observed that the Subject's hands are crooked and he cannot hold things properly. His legs are not straight and therefore he walks with a crooked gait.

8. Dr Owiti's opinion is that the Subject is handicapped both mentally and physically. He would require total assistance from his relatives or an institution through the rest of his life.

9. At the hearing of the petition the court observed that the Subject entered the court room noisily, making incoherent noises. It was apparent on his face and behaviour that he was profoundly mentally and physically incapacitated.

10. I am satisfied upon the material now before the court that the Subject, **KG**, is incapable of taking care of himself or his affairs on account of both mental and physical infirmity right from his birth. He has depended all his life upon other persons for all his needs. He will continue to need care from his relatives or an institution for the rest of his life.

11. I will therefore grant prayers (a) and (b) of the petition dated 21/10/2016. It is so ordered. There will be no order as to costs.

DATED AND SIGNED AT MURANG'A THIS 16TH DAY OF MARCH 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 24TH DAY OF MARCH 2017