



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY AND PROBATE DIVISION

MISC. APPLICATION NO. 144 OF 2016

IN THE MATTER OF J W G (A PERSON OF SUFFERING FROM MENTAL DISORDER)

DWG.....PETITIONER

R U L I N G

1. By a Petition dated 2nd November, 2016 brought under **Sections 26(1), 27 and 28** of the **Mental Health Act (Cap 248) Laws of Kenya, Order 32 Rule 15** of the **Civil Procedure rules, 2010 Section 1A and 1B** by the Petitioner, he sought orders that:

- a) The court makes a determination that JWG the Subject Person has degenerated to being a person suffering from mental disorder and requires guardianship for the management of his affairs together with those of his estate.
- b) The Applicant be authorised to act as agent/Manager of the estate of the Subject with full power and authority to manage the Estate of the Subject.
- c) The appointment confers the Applicant as a next friend of the Subject.
- d) Pending the hearing and determination of this application an order directing the Subject's Bankers National bank of Kenya and Equity to release money for his provision, medical care, nursing home deposit and legal fees.

2. The application is premised on grounds that the Subject was taken ill around September, 2016, and was hospitalized at the Avenue Hospital where he was diagnosed with dementia and memory loss. That a further medical examination conducted at Chiromo Lane Medical Centre has since confirmed the diagnosis.

3. That on being discharged from hospital the Subject was taken to the sister's house he has not been able to carry out routine tasks and activities of every day due to the illness, which has affected his motor skills causing him to be unable to walk, or feed himself and is now in a wheelchair.

4. In a supporting affidavit sworn on 2nd November 2016, the deponent DWG depones that he and his sister, HWG who lives in Orland USA are the only children of the Subject. That their mother died in September, 2014 and the sister refuses to be involved in the affairs of the Subject.

5. The Applicant averred that when he came back to Kenya in June 2016, he noticed that the Subject had started to show early signs of Alzheimer's as he would forget things that he would normally do as a

routine, such as where he kept his car keys, or where he had parked his motor vehicle.

6. The Applicant contended that due to the current condition of the Subject, the financial burden of meeting his medication expenses is very heavy on him and it is in the interest of the Subject that the Applicant gain access to the Subject's account to pay for the medical and living expenses. That the Subject has a vast estate including developments that are on-going with a developer and unless a manager of his estate is appointed, his estate is bound to go to waste and is at risk of being misused.

7. The Applicant attached to his application a medical report from Dr. Owiti of Chiromo Lane Medical Centre Department of Psychiatry, which indicated that when seen by the doctor, the Subject was in a wheel chair and looked rather tired. That his face was slightly twisted to the left side. That his speech was slurred and monosyllabic, and the rest of the communication was conducted between the doctor and the Applicant.

8. The doctor's opinion is that the Subject has rapidly deteriorated both mentally and physically. That from his file, the doctor noted that the Subject has a constricted vertebra hindering him from walking and, therefore confining him in a wheelchair. The MRI showed reduced brain volume which is an indication that he is developing dementing syndrome. It was the doctor's professional opinion that the Subject cannot manage his estate and conduct any affairs such as banking.

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

10. The Applicant in a further affidavit filed on 7th December 2016 averred that he has had to reach into his own resources to manage the Subject's hospital bills and that with the agreement of the larger family he has had him admitted at Pine Pristine Houses Ltd and has annexed an invoice for Kshs.100,000/= to cover the next six months. DNH a brother to the Subject filed an affidavit on 23rd February, 2017 in support of the Applicant and also appeared in court to state that the family had complete confidence in the Applicant to be appointed as the manager.

There being merit in the Petition dated 2nd November, 2016, I hereby allow it in the terms proposed by the Applicant.

No orders as to costs.

SIGNED DATED and DELIVERED in open court this **2ND** day of **March 2017**.

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L. A. ACHODE

JUDGE