



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**AND**

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

**HIGH COURT CIVIL MISC. APPL. 863 OF 2014**

**IN THE MATTER OF THE ESTATE OF M Z M B & B B**

**Ruling**

1. The application dated 22<sup>nd</sup> December, 2014 is brought under section 26,27,28 and 29 of the Mental Health Act, Cap 248 and all other enabling provisions of the law. The application seeks the following orders:

**(a) That Z B & M B be appointed as managers, attorney, guardian, legal representative and/or assigns of M Z M B & B B upon such terms the court may deem just.**

**(b) That this Honourable court be pleased to make orders granting the Applicants herein the right to manage the Estate of the said M Z M B & B B**

**(c) That this Honourable court be pleased to make orders granting the Applicants the right to manage the affairs of M Z M B & B B including the right to manage the estate of the late M B (deceased) on their behalf.**

**(d) That the costs of this application be in the cause.**

2. The Applicants Z B and M B have described themselves as the sister and niece to the cited persons, M Z M B and B B. It is deponed that the citees have been ailing and have been under the Applicants care for a long time. According to the Applicants, the citees suffer from mental illness and need medical care and maintenance, hence the need to access the estate of M Z M B. Medical reports in respect of the citees have been exhibited herein. It is further deponed that the citees used to rely on the estate of the Late M B and that it is only fair and just that letters of Administration of the Late M B be confirmed to allow the Applicants to continue maintaining the citees. A death certificate for B B was later exhibited through a further affidavit filed herein. The death certificate reflects that B B one of the citees herein passed away on 14<sup>th</sup> November, 2016. A more detailed medical certificate in respect of M Z M B was also brought onboard.

3. It is noted that the relationship between the citees, M Z M B and B B is not disclosed herein. Be as it may the death certificate in respect of the said B B has been annexed to a further affidavit herein sworn on 27<sup>th</sup> February, 2017. There are gaps left behind by the affidavit evidence herein. For example, who are the immediate family members of M Z M B? What comprises the estate of the said M Z M B? is there a consent from other family members or dependents of M Z M B? Any further documents e.g. letter from the chief to confirm who the family members are? How is the application herein related to the estate of the Late M B who is referred to in paragraph No. 11 of the affidavit sworn by the Applicants on 22<sup>nd</sup> December, 2014? Is the estate of the said M B not a matter that ought to be before the family court?

4. This court therefore declines to grant the orders sought at this stage. The Applicants may consider the filing of supplemental affidavit evidence for the courts consideration.

Dated, signed and delivered at Nairobi this 4<sup>th</sup> day of April, 2017

**B.THURANIRA JADEN**

**JUDGE**