



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISCELLANEOUS 84 OF 2017

**IN THE MATTER OF SECTION 26, 28(1) AND 28(2) OF THE MENTAL HEALTH ACT, CAP
248 LAWS OF KENYA**

AND

IN THE MATTER OF N.W(A PERSON SUFFERING FROM MENTAL DISORDER)

AND

**IN THE MATTER OF AN APPLICATION BY N W G TO BE APPOINTED GUARDIAN OVER
THE AFFAIRS AND MANAGER OF THE ESTATE OF N W**

IN THE MATTER OF GUARDIANSHIP OF SUBJECT- N W

RULING

The Applicant N W G, granddaughter of the subject N W has filed petition under Order 32 Rule 15 of Civil Procedure Act Cap 21 and she sought that she be appointed legal guardian of N W and manager of her estate.

The subject N W suffers from mental incapacity that hinders decision making and conduct of her affairs and ensuring her wellbeing. The current doctor's report of 20th June 2017 by Linus M. Kaburo of Muranga Referral Hospital depicts that the subject is;

old aged female who developed memory lapses 5 years ago; developed high blood pressure with incognitive communication and poor concentration. She attended Shauri Moyo Health Centre and later brought to Muranga Hospital and was diagnose to have senile dementia. This is a condition that affects the brain functioning facilities of cerebral hemisphere. This is in concurrency with her advanced age and after assessment both physically, emotionally and cognitive skills.

The subject requires urgent and continuous medical attention and nutrition as she is sick and aged 101 years of age. The Applicant, her granddaughter is capable of maintaining her medical and nutrition and hygiene requirements. The Applicant's father, L G W who resides in Kangema Muranga is the subject's only surviving son and child, consented to his daughter N W G, to take care of her grandmother in order to provide her with basic necessary attention in her fragile condition.

DETERMINATION

From the foregoing, the issue(s) that are to be determined by the Court are:-

- 1) Whether the Subject should be declared as suffering from mental disorder pursuant to the Mental Health Act, Cap 248.
- 2) Whether the Petitioner should be appointed as guardian to the Subject as well as manager of the estate of the Subject.

The Mental Health Act provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons. **Section 26 of the Act** gives the Court powers to grant orders for the management of the estate of such persons and for their guardianship by any near relatives or any suitable persons.

Section 28 of the same Act provides for management of the subject's estate. The subject shall require funds to facilitate and ensure provision of medical care, nutrition and hygiene. The Petitioner/Applicant will require to access funds from the subject's bank account Standard Chartered Bank Account Number 0150170681500 for the purpose of maintaining the subject to the best possible condition.

Under Section 26(3) of the Act it provides,

“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 persons, including proper provision for his maintenance...”

From the evidence produced by the Petitioner, the Medical Report on record, it is not disputed that the Subject is suffering from a mental disorder; a medical condition contemplated under Section 26 of the Mental Health Act.

Relying on the Report of 20th June 2017, the Court is satisfied that the Petitioner has made out her case in support of the Petition that the subject suffers mental incapacity and requires care and attention for her well being.

DISPOSITION:

In light of the above, the Court holds that:-

- 1) **N W (the Subject) is hereby declared to be suffering from mental disorder pursuant to Section 26 of the Mental Health Act, Cap 248 Laws of Kenya.**
- 2) **N W G is hereby appointed as the legal guardian to N W**
- 3) **N W G is hereby appointed as manager of the estate of N W under Section 28 of Mental Health Act to manage her estate including any such description of moveable or immoveable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods**

DELIVERED DATED SIGNED IN OPEN COURT IN NAIROBI ON 20TH JULY 2017

M.W. MUIGAI

JUDGE

IN THE PRESENCE OF;

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