



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY AND PROBATE DIVISION**

**MISC. APPLICATION NO. 10 OF 2016**

**IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF R W M (A PERSON OF UNSOUND MIND)**

**J N M.....APPLICANT**

**R U L I N G**

1. By a Originating Summons dated 2<sup>nd</sup> February 2016 brought under **Sections 28** of the **Mental Health Act (Cap 248)** and all other enabling provisions of the law by the Applicant, he sought orders of court that:

- a) The Applicant be appointed as custodian and guardian of R W M.
- b) That the Applicant be appointed to henceforth collect the retirement funds of R W M released by the Teachers Service Commission through Kenya Commercial Bank Limited, which funds shall be utilized to cater for the medical care of R W M.
- c) The Applicant be appointed as manager of all other affairs relating to R W M.

2. The application is premised on grounds that the R W M is the Applicant's wife having celebrated their marriage on 11<sup>th</sup> April 1992, and having lived together as husband and wife ever since. That in the year 2011, R W M developed symptoms of memory loss behaviour which escalated until June 2012 when she was placed under constant medical care for memory lapse and chronic hypertension.

3. The Applicant also states that in November, 2014, R W M was eventually diagnosed with terminal dementia and chronic hypertension. That R W M is incapable of making decisions as a normal adult, neither is she able to receive her benefits from her former employer on her own.

4. In a supporting affidavit sworn on 2<sup>nd</sup> February, 2016 the deponent J N M depones that he is the legal husband of R W M (hereinafter referred to as the Subject) and that as a result of her mental condition, the Applicant is unable to access the Subject's retirement benefits remitted to her through account No. [particulars withheld], Kenya Commercial Bank Limited without her consent. The Applicant prays for orders that the said funds be released to enable him pay for monthly and daily expenses towards the Subject's medical attention.

5. The Applicant attached to his application a medical report from Dr. Carol Odula-Obonyo which stated that the Subject had been diagnosed with Terminal dementia with chronic hypertension in middle age.

6. Having perused the pleadings filed in this matter and having heard the submissions of learned counsel Mr. Githinji for the Applicant, I am persuaded that the Subject is a person who is suffering from a mental disorder. In view of the expert opinion of Dr. Carol Odula - Obonyo the Consultant in which she states that the Subject is on conservative management for terminal dementia and chronic hypertension. I find that she is not therefore able to take care of herself and to conduct her own affairs.

There being merit in the application dated 2<sup>nd</sup> February, 2016, I hereby allow it as prayed by the Applicant.

**SIGNED DATED and DELIVERED in open court this 14<sup>th</sup> day of July 2016.**

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**L. A. ACHODE**

**JUDGE**