



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY AND PROBATE DIVISION

MISC. APPLICATION NO.59 OF 2015

IN THE MATTER OF SECTIONS 5,26,27,28,29,31 & 33 OF THE MENTAL HEALTH ACT

CHAPTER 248 OF THE LAWS OF KENYA

AND

IN THE MATTER OF G N M

AND

IN THE MATTER OF BARCLAYS BANK ACCOUNT NO. [xxxxxxx]

L S F INC..... PETITIONER

DIRECTOR OF MEDICAL SERVICES,

KENYA BOARD OF MENTAL HEALTH.....RESPONDENT

R U L I N G

1. By a petition dated 20th April 2015 brought under **sections 5,26,27,28,29,31 & 33** of the **Mental Health Act (Cap 248) Laws of Kenya**, by Lutheran Services Florida Inc, the Petitioner sought orders of court that:

- a) The Petitioner be appointed as Manager and Guardian of the Estate of G N M, (hereinafter the ward) and his affairs, as similarly ordered by the circuit court for Sarasota County Florida Probate Division.
- b) Manager Barclays Bank of Kenya avails statements of transactions of the account No. **[particulars withheld]** and transfer USD.429,884.61 held in same account and all other sums available, to the Petitioner through their counsel Messrs Ligunya Sande & Associates for onward transmission to the Petitioner.
- c) USD 25,000 being legal and instructions fees be paid from the ward's Barclays Bank Account no. **[particulars withheld]** to Ligunya Sande and Associates as agreed upon and endorsed by the Circuit Court at Sarasota County Florida Probate Division.

2. The application is premised on grounds that Mr. G N M is a Kenya senior citizen currently residing in the United States of America, who has been diagnosed with advanced dementia and prostate cancer and is incapable of taking care of himself. His relatives reside in the United States of America but are not willing to care for him. He is divorced from one C K. M with whom he sired two children. The family members have not been in touch with him and neither do they want to have any relation or dealings with him.

3. He is currently housed at the *[particulars withheld]*, South Tamiami Trail, Sarasota, Florida *[particulars withheld]*. The Petitioner requires funds for his medical treatment and subsequent continual care as he is yet to be admitted to a more permanent care giving facility. The amounts already incurred including all medical expenses at the *[particulars withheld]* Memorial Hospital as at 4th March, 2015 total up to USD 205,236. Funds that would cater for his accumulating costs, on the petitioner's investigation, have been found to exist in his Barclay's Bank of Kenya account and cannot be released to the guardian save by the orders of court.

4. In a supporting affidavit sworn on 17th April 2015 the deponent Ms. M B, deposes that she is a Professional Guardianship Agency Case Manager of L S F, which has been appointed the Plenary Guardian of Mr. G N M. That Mr. M was found wandering around the Sarasota/Bradenton International Airport seeming confused and disoriented. That he was taken to the hospital by the police and was diagnosed with dementia and prostate cancer. That according to medical practitioners at Sarasota Hospital, Mr. M is incapable of transacting any business neither is he capable of being transferred from the United States of America to Kenya.

5. M/s. B further avers that upon investigation, the Petitioner discovered that the ward was previously married to one C K. M from whom he was since divorced. Both M/s. C K. M and his children when traced, declined to take responsibility over the ward thus leaving him in the Petitioner's custody and care.

6. M/s. B also deposes that on 17th December, 2014, Sarasota Memorial Hospital petitioned the Sarasota County Probate Court to assign a legal guardian for Mr. M, and on 22nd December 2014 the court found that Mr. M was incapacitated and proceeded to appoint the Petitioner as Plenary Guardian to provide for his welfare and safety.

7. I have perused the documents filed in this matter and heard the submissions of M/s. Ligunya for the Petitioners. I have also heard the testimony of Dr. David Kiima, the Director of Mental Health in Kenya and Secretary to Kenya Board of Mental Health Practitioners. He confirms that since the ward is 78 years old the senile dementia he suffers from is progressive and irreversible. Further that the condition is incapacitating and the ward would need someone to manage his affairs and to care for him. I am therefore persuaded that the ward is a person who is suffering from mental disorder as envisaged under the provisions of **Cap 248 Laws of Kenya**. He is not therefore able to take care of himself and to conduct his own affairs.

8. There being merit in the petition dated 20th April 2015, I hereby allow it in the terms proposed by the Petitioners.

It is so ordered.

SIGNED DATED and DELIVERED in open court this **8th day of May 2015**.

.....

L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Petitioner

In the presence ofAdvocate for the Respondent