



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MISC. APPLICATION NO 154 OF 2014
IN THE MATTER OF MENTAL HEALTH ACT
PETITION OF L M M IN THE MATTER OF G N M

RULING

G N M, the subject of these proceedings under the Mental Health Act Cap 248 is 75 years Old. The subject has been diagnosed with a mental disorder known as dementia as a result of long term illness.

According to the medical report of Dr. Eva Njenga dated 24th July, 2014; it states;

“G has had a long standing diabetes and has been followed up at our clinic since 2008. She has also had poor memory and episodes of confusion probably due to long standing diabetes in 2010; she was assessed by Neuro Physician in view of her memory loss and put on Aricept without improvement. In 2013, she was admitted thrice due to epileptic fits and was commenced on Epanutin and Oxybral. She was last seen in December 2013 and was reported to have mood swings, insomnia and weight loss despite feeding well. G's memory has continued to deteriorate and she can no longer make any decisions for herself.”

The Petitioner L M M therefore wants this Court make orders to provide for the well being of the subject and secondly protect the properties of the subject. The Petitioner has had the subject under her care since 2008. The subject's husband died on 13/3/2014 as evidenced by the death certificate attached No. **[particulars withheld]** and the vast estate was distributed and the subject G N M inherited:

- a. Eldoret Municipality/Block 6/37 Mahindi Hotel
- b. L.R.NO. 1160/303 Ndege Road Karen
- c. L. R. NO. 1160/916 Ndege Road Karen
- d. L. R. NO. 1160/917 Ndege Road Karen
- e. ½ Kiptagat/Kiptagat/Block 1/26 Eldoret
- f. Half Kaptgat/Block 1(Yamumbi) 132
- g. Half Eldoret Municipality Block 16 (Kamukunji) 7
- h. Half Kiambu Ngenda/Wamwangi/486

i. ½ 124448/4 I.L NO. 43470 Rock Centre

j. 1 of 2 Gikomba Plots.

The children of the subject were present in Court during the oral hearing of the petition. They are;

1. P G

2. T M

3. C K

4. M W

5. J M

6. J N

The children of the subject consented to the application except for the 1st and 2nd who were not in Court at the time. However in the Court record there is a filed consent of all the children of the subject, filed on 23/8/2014.

There are attached to the petition of the applicant documents to confirm that the subject has been admitted in hospital namely; Nairobi Hospital and has been taken to the doctor at various intervals, Dr. Kioy P. G and Dr. Wachira Maina. He has also visited Chinese General Clinic Co. Ltd and Healthy Mind Consultants and Lion First Eye Clinic.

There are also documents to prove ownership of the listed properties in the will of the subject's late husband which are annexed and confirm the properties are held by the subject.

The Petitioner informed the Court she takes care of the subject and has employed house help and servants to care for the subject. She avails her food, proper care and shelter. She explained that in terms of medical care and provision of the subject she spends almost KSH.85, 000/= a month.

Section 26 of the Mental Health Act Cap 248 provides for judicial power over persons and estate of persons suffering from mental disorder. Based on proper ground and proof the Court may grant orders as to the custody, management and /or guardianship of the subject.

In the premises, since there is no dispute among the family members, children of the subject and they have filed written consents and appeared in Court, this Court is satisfied of the subject's condition as evidenced by the doctor's letter of 24/7/2014 that the subject cannot make decisions for herself and needs medical attention and care and there is need to appoint a manager of her estate;

a. To manage the estate.

b. To include proper provisions for the subject's maintenance.

c. Maintenance of such members of the subject's family who are dependent on the subject for maintenance.

With regard to Section 26(1) (b) of the Mental Health Act L M M is appointed the guardian of the subject in charge of providing day to day care and ensuring medical attention for the subject paid for the estate.

With regard to the management of the estate of the subject this Court appoints L M M and P G to manage the said estate for the upkeep and care of the subject and to protect it for the children of the subject.

Read and signed in the presence of Mrs. Wambugu for the Petitioner.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER, 2014

MARGARET MUIGAI

JUDGE

In the presence of:

Counsel for the Petitioner Mrs. Wambugu