



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Miscellaneous Application 119 of 2008

IN THE MATTER OF SECTION 26 AND 28 OF THE MENTAL HEALTH ACT

AND

IN THE MATTER OF THE ESTATE OF DELFIN MWANGI WACHIRA (PATIENT)

MARY WAMBUI WACHIRA.....PETITIONER

RULING

This is a petition under **Sections 26 and 28** of the **Mental Treatment Act**. Mary Wambui Wachira, the Petitioner, claims that her husband of some 27 years has of late started acting strangely. He is moody, abusive and has assaulted her. He has also refused to provide for his family and gone a head to deny the paternity of their two children. He is selling the family properties and claiming that some of them belong to his father.

Taking all these factors into account the Petitioner is of the view that her husband is mentally sick and seeks an order of this court to compel him to go to Dr. Njau, the Provincial Psychiatrist for treatment. She also prays that she be appointed the manager of her husband's estate.

Upon being served with the petition, the husband was livid. He refuted the allegations of his mental illness and said that the Petitioner is trying to obfuscate the irreconcilable marital differences between them. Although he initially refused to submit himself to Dr. Njau, the Provincial Psychiatrist, he later on in his own accord went there and Dr. Njau has examined him and filed a report stating that he is mentally sound.

Upon being served with Dr. Njau's report, the Petitioner has dismissed it on the ground that the same was given without her input. She said that Dr. Njau examined her husband in her absence and she cannot therefore accept his report.

I have considered the matter. The Petitioner claimed that her husband is mentally ill and sought an order of this court to compel him to go to Dr. Njau, the Provincial Psychiatrist, for treatment. She now does not want to accept Dr. Njau's report because it is not what she desired. She cannot have her cake and eat it. In view of Dr. Njau's report stating that the Petitioner's husband is mentally sound I find no merit in this petition and I accordingly dismiss it with costs.

DATED and delivered this 5th day of November, 2009.

D. K MARAGA

JUDGE.