

F M swore the replying affidavit on his own behalf and on behalf of the family members related to A S M as an interested party. That his father M I M– Deceased was a first cousin to A S M. That the other immediate first cousin is A I who stays abroad but with close links with the family. That the applicant herein is not related to them in any way. That on 5th March 1997 A S M granted legal authority to his father, M I M now deceased to be in charge of his responsibilities including managing and transacting all affairs on KAKAMEGA BLOCK [...]. (Annexed and marked FM 1 is a copy of the General Power of Attorney). That his father always took good care of the properties of the deceased and in particular KAKAMEGA BLOC [...], whereby he paid levies, collected rent and kept the premises in good habitable conditions until when he passed on in 2015. That on 30th March 2012, M I M leased the said property to one S A H for a period of 5 years (Annexed and marked FM 2 is a copy of the leave agreement). That after his death, the family sat down after his burial and appointed him to take over his father’s duties regarding managing the Kakamega property being KAKAMEGA BLOC [...]. That since A S M had become mentally incapacitated, he was not in a position to grant the said authority to him and this was instead done by the family on his behalf (Annexed herewith and marked FM 3 is a copy of the agreement). That the petitioner has at no single time managed the properties of A S M as alleged. The family members do not know the petitioner and they have never appointed him to manage the said premises in the 2011 as alleged. That the petitioner is related to the current tenant – S A H being cousins. That the said S A H pays rent on time and the same is used in maintaining A S M as per the family agreement. That the petitioner is malicious and the applicant’s intention is to unjustifiably enrich himself. That there is a pending suit between the petitioner and the current tenant being Kakamega Civil Appeal Number 135 of 2014 which was to come up for hearing on 10th February 2016 whereby the petitioner is seeking for a share of the rent. That the petitioner should further be stopped from interfering with the quiet possession of the premises by the tenants as this amounts to breach of the lease.

This court has carefully considered the petitioner’s and the interested party’s submission. It is not in dispute that the patient A S M suffers from a mental illness and a medical report has been produced to that effect. From the evidence produced by the petitioner, the medical report on record, it is not disputed that the patient is suffering from a mental disorder, a medical condition contemplated under section 26 of the Mental Health Act. It has also been established that the petitioner is not a relative to the patient. F M swore the replying affidavit on his own behalf and on behalf of the family members related to A S M as an interested party. That his father M I M– Deceased was a first cousin to A S M. He avers that the applicant herein is not related to them in any way. That on 5th March 1997 A S M granted legal authority to his father, M I M– Deceased to be in charge of all his responsibilities including managing and transacting all affairs on KAKAMEGA BLOCK [...]. (Annexed and marked FM 1 is a copy of the General Power of Attorney). That his father always took good care of the properties of the deceased and in particular KAKAMEGA BLOC [...], whereby he paid levies, collected rent and kept the premises in good habitable conditions until when he passed on in 2015. That on 30th March 2012, M I M leased the said property to one S A H for a period of 5 years (Annexed and marked FM 2 is a copy of the leave agreement). That the petitioner is not known to the family.

Section 26 of the Mental Health Act Cap 248 of the laws of Kenya states that;

“The court may make orders –

a. for the management of the estate of any person suffering from mental disorder; and

b. for the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person”.

The interested party has submitted that, the petitioner has at no single time managed the properties of A S M as alleged. The family members do not know the petitioner and they have never appointed him to manage the said premises in the 2011 as alleged. The petitioner admits he is not a relative and that they come from the same clan with the patient. I find the petitioner has not proved his relationship with the patient and if he ever managed the property in question. I find he has no *locus standi* to be appointed a guardian especially when the patient’s relatives exist and are living with him. It is the interested party’s

submission that his father had been granted a power of attorney to manage the patient's estate. That after the death of his father, the family sat down after his burial and appointed him to take over his father's duties regarding managing the Kakamega property being KAKAMEGA BLOC [...]. That since Abdi Said Musa had become mentally incapacitated, he was not in a position to grant the said authority to him and this was instead done by the family on his behalf (Annexed herewith and marked FM 3 is a copy of the agreement). I find that the petition has no merit and is dismissed with costs. However, the interested party is advised to take the appropriate steps to legalize the issue of guardianship of the patient.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 27TH DAY OF JULY 2017.

N. A. MATHEKA

JUDGE