



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

MISCELLANEOUS 330 OF 2012

**IN THE MATTER OF LEAH WACHU WAIGANJO (A PERSON SUFFERING FROM A MENTAL DISORDER)**

AND

**IN THE MATTER OF AN APPLICATION BY WILLIAM KIBERA WAIGANJO TO BE APPOINTED MANAGER OF THE ESTATE OF AND GUARDIAN TO THE SAID LEAH WACHU WAIGANJO**

**WILLIAM KIBERA WAIGANJO.....APPLICANT**

**R U L I N G**

1. This is an application (**notice of motion dated 14<sup>th</sup> June 2012**) under **section 26 (3)** of the **Mental Health Act, Cap 248** for an order that WILLIAM KIBERA WAIGANJO (Applicant) be appointed guardian *ad litem* and manager of the estate of **LEAH WACHU WAIGANJO** (the **Subject**).

2. The application is made upon the main ground that the Subject suffers from a mental disorder that has rendered her incapable of managing her own affairs and properties. More immediately, it is stated that some two landed properties of the Subject are in danger of alienation following an *ex parte* judgment against the Subject by a court of law, and that the proposed guarding *ad litem* needs to appropriately apply to court to challenge the said judgment.

The application is supported by the affidavit of the Applicant sworn on 13<sup>th</sup> June 2012. To it are annexed a number of documents, including two medical reports.

3. It is deponed in the supporting affidavit that the Subject is the Applicant's elder sister who has been suffering from **temporal lobe epilepsy** and **periodic depressions** from 1997, and as such is unable to manage her affairs and estate. It is further deponed that the Subject is not married and does not have children, and is residing with her father, JOSEPH WAIGANJO NDAGUTHA.

4. The first medical report is dated 19<sup>th</sup> August 1997 issued from **Mathari Hospital, Nairobi**. It is signed by one DR. P. D. KANYUIRA. It states that the Subject

**“...suffers from Temporal Lobe Epilepsy and periodic depressions. She has had three episodes of acute psychosis necessitating her admission to hospital for in-patient management. She is on regular medication since 1980 and it is necessary that she continues on the treatment. Any attempt to reduce or stop the maintenance medication she is on makes her get into confusion states of mind, loss of memory and acute psychosis or fits.”**

5. A more recent medical report is dated 31<sup>st</sup> May 2012 issued by the same Mathari Hospital. It is signed by one DR. MUTINDA. The report says of the Subject simply

**“The above is a patient on follow up in our facility for a *Bipolar Mood Disorder* complicated by *Temporal Lobe Epilepsy*. She is currently on medication but has not yet stabilized. She is unable to make sound judgment.”**

6. Also annexed to the supporting affidavit is a decree issued by a magistrate's court at Thika which apparently names the Subject as a Defendant.

7. The Subject was presented to court on the 27<sup>th</sup> June 2012. She is a middle-aged lady who appears well-nourished and well-groomed. She knew her name and was able to state correctly her home and the names of her father and other relatives. She stated that she is not married, but that she had a male child called JOSEPH WAIGANJO who had died. She further stated that she has a piece of land given to her by her parents which her father and brother take care of it on account of her illness.

8. The Subject answered all the questions asked with a lot of hesitation and probing. It was apparent that she was confused and incapable of making sound judgment. My own observations of her, coupled with the medical reports before the court, indicate that she is not capable of taking care of her own affairs and estate.

9. I am therefore satisfied that upon inquiry that the Subject is suffering from a mental disorder to such extent as to be incapable of managing her affairs, though she is capable of managing herself, and is not dangerous to herself or to others, nor likely to act in a manner offensive to public decency.

10. I therefore appoint the Applicant, WILLIAM KIBERA WAIGANGO, to be the guarding *ad litem* of the Subject, LEAH WACHU WAIGANJO, to manage her estate, including proper provision for her maintenance, and to take any appropriate legal action for the benefit of the Subject and her estate.

11. There will be no order as to costs of the application.

**DATED AT NAIROBI THIS 27<sup>TH</sup> DAY OF JUNE 2012**

.....

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JUNE 2012**



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