



REPUBLIC OF KENYA



In re SK (Petition E003 of 2024) [2024] KEHC 15078 (KLR) (28 November 2024) (Ruling)

Neutral citation: [2024] KEHC 15078 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BOMET

PETITION E003 OF 2024

RL KORIR, J

NOVEMBER 28, 2024

N THE MATTER OF THE CIVIL PROCEDURE ACT AND CIVIL PROCEDURE RULES, 2010

AND

IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 OF THE LAWS OF KENYA

AND

IN THE MATTER OF SK

RULING

1. GK and RCK (Applicants) filed a Notice of Motion Application dated 18th July 2024 which sought the following orders:-
 - i. Spent.
 - ii. That this Honourable Court be pleased to find one SK is incapable of protecting his interests with regard to his affairs due to a mental disorder.
 - iii. That the ex-parte Applicants KG and RCK be appointed as guardians of SK.
 - iv. That costs of this Application be provided for.
 - v. That such further and/or other orders be made as the court may deem fit and expedient.
2. The Application was brought under section 26 of the *Mental Health Act*, Order 32 Rule 15 of the Civil Procedure Rules, sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act*. The Application was based on the grounds on the face of the Application and further by the Supporting Affidavit sworn by KG on 18th July 2024.
3. The Applicants stated that KG was the brother to SK and RCK was his mother. That SK was involved in a road traffic accident which caused him to suffer severe injuries and he wanted to institute legal proceedings seeking general damages but was unable to do so due to a mental disorder.
4. It was the Applicants' case that SK was incapable of managing his affairs and they wanted this court to so declare and appoint them as his guardians. KG appeared before this court on 30th October 2024



and stated that SK had limited comprehension. That he had the problem since he was young and was incapable of taking care of his interests.

5. The Subject's mother, RCK stated that SK was born in the year 2004 and was born with a disability as he could not speak. That he also got an accident and was dependent on her. She undertook to continue taking care of him as she lived with him.
6. The Subject, SK appeared before this court on 30th October 2024 and the court observed that he was not attentive, looked lost and did not answer questions put to him by the court.
7. The Applicants produced Dr. Stanley Bore who stated that he worked at Longisa County Hospital as a Principal Occupation Therapist. He told the court that he examined SK and found that he had impaired speech and could not express himself. He filed his Report in court as KJ 4.

Determination.

8. Section 27 (1) (b) of the [Mental Health Act](#) states that:-

The court may make such an order as it considers necessary for the administration and management of the estate of any person with mental illness including an order making provision for the maintenance of members of the person's immediate family who are dependent upon the person.

9. In considering this Application, this Court is guided by three main factors:-

- i. There must be medical evidence warranting the determination by the Court that the subject suffers from mental disorder.
- ii. The persons to be appointed either managers or guardians must be fit to be appointed.
- iii. The Court must be satisfied that the proposed managers will utilize their powers for the benefit and welfare of the Subject.

10. The overriding guiding principle in applying the aforementioned factors is the welfare and best interests of the subject. Section 28(4) of the [Mental Health Act](#) provides that:-

A manager shall perform the manager's duty under this Act responsibly taking into account the best interests of the estate of the person who is suffering from mental illness.

11. I have considered the Medical Report dated 29th February 2024 and Dr. Stanley Bore's submissions before court. I also observed the Subject and examined the Applicants in court. I am satisfied that the Subject suffers from a mental disorder and was incapable of taking care of his affairs I am also satisfied that the Applicants are the subject's family members being the brother and mother respectively.

12. I am satisfied that they are fit to be appointed as guardians of the subject

13. In the end, I make the following orders:-

- i. The Subject, SK is incapable of managing his affairs due to a mental disorder.
- ii. KG and Rusi Chepkoech are hereby appointed as guardians of the SK.
- iii. The Subject, SK shall be at liberty to apply should his mental status change.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 28TH DAY OF NOVEMBER, 2024.



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R. LAGAT-KORIR

JUDGE

Ruling delivered in the absence of the Applicants. Siele (Court Assistant).

