



In re SSS (Person Suffering from Mental Disability) (Miscellaneous Case E230 of 2024) [2024] KEHC 14902 (KLR) (Family) (28 November 2024) (Judgment)

Neutral citation: [2024] KEHC 14902 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS CASE E230 OF 2024
H NAMISI, J
NOVEMBER 28, 2024
IN THE MATTER OF S.S.S (PERSON SUFFERING FROM MENTAL DISABILITY)**

BETWEEN

SSS SUBJECT

AND

SKS PETITIONER

JUDGMENT

1. The Petition before the Court was brought by S.K.S, being the husband to the Subject, S.S.S. S.S.S is an 85-year-old woman, residing in Muthaiga, Nairobi with her husband, SKS. The Petition which is brought under sections 26 (1) and 28 (1) of the [Mental Health Act](#), is supported by an Affidavit sworn by the Petitioner, as well as annexures thereto. The Petition seeks the following orders:
 - i. A Declaration do issue that SSS of P. O. Box 4XXX95 – 00100 Nairobi is suffering from a mental disorder pursuant to the [Mental Health Act](#). Cap 248 of the Laws of Kenya;
 - ii. SKS be appointed as legal guardian and manager over the affairs of the estate of SSS;
 - iii. Costs of this petition be provided for

2. The Petitioner also filed a Notice of Motion dated 14 October 2024 seeking the following orders:
 - i. (spent)
 - ii. The court do issue an order appointing SKS as legal guardian and manager over the affairs of the estate of SSS;



- iii. Further to his appointment as legal guardian over the estate of SSS, SKS be authorised to effect the transfer of her shares into Sofat Incorporated Family Trust for the benefit of all her beneficiaries;
 - iv. That the costs of the Application be provided for.
 3. The Notice of Motion is supported by an Affidavit sworn by the Petitioner/Applicant and premised on grounds that are similar to those contained in the Petition. For this reason, I chose to determine the Petition, which in effect, will determine the application as well.
 4. In the Affidavits, the Petitioner depones that after undergoing various medical examinations, the Subject was declared to be suffering from a mental disorder. The diagnosis was done by Prof. Peter Garrard, PhD FRCP, who is a Professor in Neurology based in the United Kingdom. Attached are copies of letters dated 13 October 2023 and 5th December 2023 confirming a diagnosis of moderate to severe stage Alzheimer's disease and prescribing medication.
 5. The Subject has two sons, both of whom have sworn Affidavits in support of the Petition. Both sons are resident in the United Kingdom.
 6. At the hearing, the Petitioner testified that he resides with the subject in Nairobi. She is normally at home, in the care of the nurse and other staff. The Petitioner stated that it is his desire to set up a family trust and incorporate the Subject's shares within the said Trust. Unfortunately, the Subject's health is deteriorating and she can hardly understand anything.
 7. The two sons, AS and AS, confirmed the Petitioner's averments. The Court also had a chance to speak to the Subject and it was clear that she is not well. Although she could remember certain details about her life, her level of understanding and communication were not very good. I am persuaded that this Petition is properly before the Court.
 8. Section 26 of the said Act states that:
 - 1) 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.
 - (2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.
 - (3) Whereupon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder
 9. I have also considered all the material placed before me. It is apparent that the subject suffers from a mental disorder and that she is incapable of managing his own affairs, although she is not dangerous to herself.



10. The definition in Section 2 of the Act provides that:

“A person suffering from mental disorder” means a person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and suffering from mental impairment due to alcohol or substance abuse.”

11. In the circumstances, the Court makes a finding that the subject is a person suffering from a mental disorder within the definition of the *Mental Health Act* and hereby appoints the Petitioner as the subject’s guardian. Additionally, the Court appoints the said Petitioner as general manager of the estate of the Subject.

12. Pursuant to the Notice of Motion filed herein, I make further orders allowing transfer of shares held by SSS into the Sofat Family Trust. For the avoidance of doubt, such manager’s general powers will not include the power of alienation, sale or transfer of any other assets held by the Subject but will include all the powers necessary for the management of such and other assets, and to plead and prosecute and/or defend any action brought by or against the subject in respect of any of the assets forming part of her estate.

DATED AND DELIVERED AT NAIROBI THIS 28 DAY OF NOVEMBER 2024

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Ms. Gathimba.....for the Applicant

