



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re KSR (Miscellaneous Cause E014 of 2021)  
[2023] KEHC 1231 (KLR) (17 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1231 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CAUSE E014 OF 2021**

**JN ONYIEGO, J**

**FEBRUARY 17, 2023**

**IN THE MATTER OF**

**ASR ..... PETITIONER**

***(IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 AND  
IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP  
AND MANAGEMENT OF KHADIJA SAID RASHID(PATIENT))***

**JUDGMENT**

1. Vide an undated petition filed on April 30, 2022, Anisa Said Rashid moved this court seeking orders that;
  - a. A declaration that Khadija Said Rashid is mentally ill and should be under the custody and care of a guardian;
  - b. That Anisa Said Rashid the sister of Khadija Said Rashid be appointed as the sole custodian and guardian of the said Khadija Said Rashid to protect her and take care of all her interests.
  - c. That Anisa Said Rashid be appointed manager of the estate of Khadija Said Rashid to protect her interest and make provision of her upkeep forthwith
  - d. Any other directions this honourable court may deem fit to grant.
2. The application is supported by an affidavit sworn by the applicant and filed on April 30, 2022. It is anchored on the ground that the patient herein who is her sister has been suffering from mental illness which has some family history as their brother, mother and another sister had suffered similar illness.
3. She averred that the patient started displaying some signs of illness during her childhood which got worse as she grew up. That it was the subject's late husband one Mubarak who drew her attention to the subject's condition. That upon the husband's death, the subject was unable to manage her vast



estate due to her mental condition thus exposing her to the risk of people taking advantage of her and swindled her of large sums of money amounting to 16 million.

4. She stated that despite taking her sister to her house to look after her, she was influenced by her friends hence went back to her bad company which continued with exploiting her without resistance. That when she took her to a psychiatrist, it was confirmed that indeed she was suffering from mental illness which required close supervision and therapy.
5. During the hearing, the applicant /petitioner (pw1) reiterated the content of the affidavit in support of the application. She gave instances when the subject had misused resources due to poor judgment and manipulation by people outside the family.
6. Pw2 Wanjiru Julius a family friend to Pw1 corroborated Pw1's testimony. Pw3 Dr. Edwin was requested by the law firm of Ndeto Advocates to do a mental assessment of the subject herein. That when he examined her, she was oriented but talking too much. That she was articulate and did not exhibit symptoms of mental disorder
7. The Dr. went further to state that the subject exhibited tendencies of bipolar, was paranoid and had suffered sleeplessness. In conclusion, he found that she was suffering from depression and bipolar. He produced a medical report to that effect.
8. Pw4 Hamisi a former teacher to the subject told the court that the subject used to suffer illness while in primary school and as a family friend, he was aware that her sickness had a family history.
9. When the patient appeared before me, she appeared normal and quite coherent. she expressed surprise that her sister had framed her as a person suffering from mental disorder. She told the court that she was not sick and that her sister (applicant) was after her property.
10. I have considered the application herein, supporting documents and oral testimony by the witnesses. The only issue for determination is whether the subject is a person suffering from mental disorder so as to require the appointment of her guardian and manager of her estate. The court has considered all the material placed before it. Section 26 of the *Mental Health 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

11. 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.”

12. From the evidence of the applicant, her sister the subject herein is not mentally fit. This was discerned from the manner in which she lavishly spent the estate left to her by her late husband. That her nephews were misleading and in fact swindling of her wealth hence the need to protect her by appointing a guardian. According to the doctor, the subject is not suffering from mental disorder but rather the issue at hand is depression and bipolar.

13. On her part, the subject stated that she was normal and not sick hence wondered why her sister had come to court seeking for her to be declared a person suffering from mental disorder. She instead accused the sister of framing up her sickness so as to take her property. In my opinion and as the doctor correctly put it, the subject is not suffering from mental disorder. She is pretty conscious of what is going on regarding her property and her life and that she is staying lone in her house without anybody’s support. Whereas the intention may be good by the applicant, she has not met the threshold for declaring somebody as a person suffering from mental disorder. Accordingly, it is my finding that the application has no merit hence dismissed with no order as to costs

**DATED, SIGNED DELIVERED VIRTUALLY AT MOMBASA THIS 17<sup>TH</sup> FEBRUARY 2023.**

**J.N. ONYIEGO**

**JUDGE**

