



In re RKM (a Person Suffering from Mental Disorder) (Family Miscellaneous Application E038 of 2023) [2023] KEHC 2661 (KLR) (Family) (29 March 2023) (Judgment)

Neutral citation: [2023] KEHC 2661 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

FAMILY MISCELLANEOUS APPLICATION E038 OF 2023

PM NYAUNDI, J

MARCH 29, 2023

IN THE MATTER OF SECTION 2,26,27 AND 28 OF THE MENTAL HEALTH ACT CAP 248

AND

IN THE MATTER OF ORDER 2 RULE 15 OF THE CIVIL PROCEDURE RULES

IN THE MATTER OF RUTH KALUKI MUNYAO (A PERSON SUFFERING FROM MENTAL DISORDER)

IN THE MATTER OF THE PETITION BY RMK AND JKM TO BE APPOINTED AS GUARDIANS OVER THE AFFAIRS OF AND MANAGERS OF RKM

IN THE MATTER OF

RMK 1ST PETITIONER

JKM 2ND PETITIONER

JUDGMENT

1. Vide Petition dated January 20, 2023, the petitioners seek the following orders that:
 - a. That RKM of ID No 1028xxxx be declared to be suffering from a metal disorder as defined in the *Mental Health Act*, cap 248 Laws of Kenya.
 - b. That RMK and JKM be and appointed as the Guardians of RKM
 - c. That RMK and JKM be appointed as the Managers of the Estate and all the affairs of RKM .
 - d. That RMK and JKM be granted access to funds and all the assets in the Estate of RKM to help offset the High Costs incurred in the continued treatment and management of her estate.
 - e. Any other order or relief the Court may deem fit to grant in the circumstances.



1. The Petition is supported by the Affidavits of the 1st Petitioner sworn on the January 20, 2023, Authority to plead dated January 20, 2023 by the 2nd Petitioner and Affidavit of Consent to Petition sworn by the son of the Subject, TMM on January 20, 2023. The Petitioners are the husband and son of the Subject.
2. PW1— RMK . He is the husband of the Subject. That the subject complained of back pains in January 2022 and she was taken to Langata Hospital in Nairobi. That then she did not improve after seeking further treatment at General Accident Centre and Nairobi Hospital, he decided to seek treatment in India.
3. It as in India that the wife was diagnosed with progressive encephalomyelitis with rigidity and myoclonus. After treatment in India it was recommended that she be on home based care. Since her return in October 2022 she remains totally dependent on assistance and she is no responsive.
4. They seek this order so that they are able to access the assets that are registered in her name and the bank accounts so that they have the sources to cater for her treatment.
5. PW2- Dr. William Moroga The Subject has been under his care since her return from India. She has lost of her cognitive functions. She is in a neuro vegetative state and is unable to make any decisions. He has seen the medical reports dated August 5, 2022 (from Manipal Hospital) and February 27, 2023 (February 27, 2023 (from Apex Physio Therapy Services) and is in agreement with the diagnosis and conclusion that the Subject is dependable.
7. PW3-JKM is the 2nd Petitioner. He agrees with the statement of his Father (PW1) one of the Caretakers. He confirmed that he is engaged to take care of the Subject. He provides for his basic requirements including, cleaning, cooking, and helping him generally.
8. PW 4 TMM He is the other son of the Subject and consents to the Petition. The orders sought are in the interest of his mother.
9. The Court had an opportunity to see the Subject. Observed that the family has set up for her a medical bed in the house and she requires support to sit up. She was unresponsive.
10. The most recent report by Apex Physio therapy services advised that the subject ‘the mental ad cognitive state of the brain still not in a position to make judgement (semi-conscious) hence can’t participate in any decision making besides the inability to functionally use the limbs. Kindly consider her dependable and has to be assisted.’
11. From the affidavit evidence I garner that the subject is aged 53years. She has been incapacitated by the illness and incapable of managing h own affairs and is totally dependent on her family and the medical team.
12. The Petitioners have set out the properties of the Subject and bank accounts under paragraph 17 of the Petition. The Petitioners have also made available marriage certificate, birth certificate in respect to the 2 Petitioner and CR 12 forms in respect to the companies in which the Subject is a Director.
13. Section 26 of the *Mental Health Act, 2022* Cap 248 Laws of Kenya provides for the circumstances under which a court may make orders for the care and Administration of property of persons with mental illness.
14. I have carefully considered this Petition, the Affidavits and reports filed in court. I am satisfied that the Subject is a person suffering from a mental disorder and is incapable of managing her own affairs.
15. Accordingly, the petition is allowed and;



- a. RMK and JKM are appointed as Guardians/ Representatives to RKM
 - b. That RMK and JKM are appointed as the Managers of the Estate and all the affairs of RKM .
 - c. That RMK and JKM are granted access to funds and all the assets in the Estate of RKM to help offset the High Costs incurred in the continued treatment and management of her estate.
 - d. Pursuant to this appointment RMK and JKM shall deliver to court and the public Trustee, within 6 months, an inventory of the property belonging RKM
 - e. As Manager of the Estate of RKM , RMK and JKM may dispose of the property only with the sanction of the court.
 - f. In accordance with section 27(4) of the [Mental Health Act, 2022](#) the Petitioners shall cause the publication of notice in the Gazette, informing the public of their appointment as the managers of the estate of RKM
 - g. The matter will be mentioned before court on November 16, 2023 to confirm compliance.
16. Costs to be borne by the estate of the subject.

It is so ordered

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF MARCH, 2023.

P M NYAUNDI

JUDGE

In the presence of:

Ms Njuguna AdvocateAdvocates for the Petitioners

Karani Court Assistant

