



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of SDS (Patient) (Miscellaneous Application E129 of 2022)
[2023] KEHC 17420 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 17420 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS APPLICATION E129 OF 2022
MA ODERO, J
APRIL 28, 2023
IN THE MATTER OF SECTION 26 AND 28 OF THE
MENTAL HEALTH ACT
AND
IN THE MATTER OF THE ESTATE OF SDS (PATIENT)
AND
IN THE MATTER OF AN APPLICATION BY
DSS TO BE APPOINTED
THE GUARDIAN AND MANAGER OF THE ESTATE OF
SDS (PATIENT)**

IN THE MATTER OF

DSS PETITIONER

JUDGMENT

1. Before this court is the petition dated July 1, 2022 by which the Petitioner DSS seeks the following orders:-
 - “ 1. The Honourable Court be pleased to declare that SDS is suffering from Mental Disorder as defined under the *Mental Health Act* (Cap 248) Law of Kenya.
 2. The Honourable court be pleased to appoint the Petitioner herein, DSS to be Guardian of the Patient, SDS;
 3. The Honourable court be pleased to appoint the Petitioner herein DS, managers of the Estate of SDS, with power to:-



- i) Dispose off the property known as Land Reference Number 12325/45, Nairobi.
 - ii) Take any action necessary to seek and obtain medical treatment for SDS;
 - iii) Take any action necessary subject to the provisions of the *Mental Health Act* for the protective and preservation of the Estate of SDS including collecting all monies payable to him, paying out all her just debts, managing his businesses and executing his deeds and documents on his behalf;
 - iv) Operate all her accounts being Joint bank account 6439050018 in the names of DSS and/or SDS domiciled at NCBA Bank, Industrial Area Branch, along Enterprise Road and Joint Bank Account No 00400092062401 in the names of DSS and/or SDS with 1 & M Bank Limited, Biashara Branch.
 - v) Take any other necessary action to preserve and protect the interest of SDS.
4. That this honourable court does make any such orders as may be necessary to preserve the interest and welfare of SDS.
 5. The costs of the Petition be provided for.
2. The Petition which was premised upon Section 26 and 28 of the *Mental Health Act* was supported by the affidavit of even date sworn by the Petitioner.
 3. The Petitioner is the husband of the subject (Patient) SDS. He told the court that he and the subject have been married for the past fifty-one (51) years and have two adult sons. A copy of their marriage certificate appears as Annexure DSS-1.
 4. The Petitioner told the court that the subject who is aged Seventy –four (74) years old suffers from several medical ailments including dementia and Parkinsons Disease. That she is bed-ridden and requires twenty four (24) hour nursing care). That the subject is unable to manage her own affairs and requires a legal guardian.
 5. Section 26 of the *Mental Health Act*, Cap 248 provides for the circumstances in which a court may make orders for the management and maintenance of a Patient (subject) as follows:-

“Order for custody, management and guardianship

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. Where upon 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.” [own emphasis]
6. I have considered the petition before the court, the evidence adduced before the court as well as the documents annexed to the Petition. In order to warrant the appointment of legal guardian it must be shown that the subject suffers from a mental incapacity rendering her incapable of managing her own affairs.
7. The Petitioner has told the court that the subject suffers from several ailments. I have perused the medical report dated June 12, 2022 prepared by Dr. Juzar Hooker (Annexure DSS-4). The report indicates that the subject suffers from “severe dementia” with “severe cognitive-motor syndrome”. That the subject is unable to walk on her own and requires 24 hour home based care.
8. The Doctor in his report concluded that there has been a steady decline in the condition of the subject. That she is unable to comprehend and discharge her own affairs. The Doctor recommended that a Guardian be appointed for the subject.
9. I was able to see the subject online. She was an elderly lady lying in her bed. The subject was unresponsive and did not reply when spoken to. She appeared to be unaware of her surroundings.
10. Based on the medical and based on my own observation. I find that the subject is suffering from a mental disorder under the terms of Section 26 of the [Mental Health Act](#). She is clearly not in a position to manage her own affairs.
11. PW2 Shyamal Shah and PW3 Sarju Shah are both sons of the Petitioner and the subject. They both confirm that their mother is unwell and is not in a position to manage their own affairs. The two (2) sons confirm that they are aware of the Petition and confirm that they give their consent to it.
12. Finally I am satisfied of the merit of this Petition. Accordingly I allow the Petition and make the following orders:-
 - (1) The subject SDS is declared to be a person suffering from a Mental Disorder as defined under the [Mental Health Act](#), Cap 248, Law of Kenya.
 - (2) The Petitioner DSS is appointed as Guardian of the Patient and manager of her estate.
 - (3) Prayers 3(i), 3 (ii), 3 (iii), 3 (iv) and 3(v) of the Petition are hereby allowed.

DATED IN NAIROBI THIS 28TH DAY OF APRIL 2023.

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MAUREEN A. ODERO
JUDGE

