



REPUBLIC OF KENYA



KENYA LAW
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**In re SMG (A person Suffering from Mental Disorder) (Petition
16 of 2023) [2023] KEHC 20795 (KLR) (28 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20795 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KIAMBU

PETITION 16 OF 2023

A MSHILA, J

JULY 28, 2023

**IN THE MATTER OF AN APPLICATION BY J.W. TO BE APPOINTED
AS GUARDIAN OVER THE AFFAIRS OF THE ESTATE OF SMG.**

IN THE MATTER OF

JW APPLICANT

JUDGMENT

INTRODUCTION

1. Before the court for determination is the Chamber Summons dated March 20, 2023 brought by way of a Certificate of Urgency under the provisions of Sections 26 (1) and (3) and 28 of the [Mental Health Act](#) seeking the following orders:
 - a. Spent.
 - b. Spent
 - c. That pending and determination of the Petition this Honourable Court be pleased to appoint JW as the interim guardian and manager of the estate of SMG with power to immediately take charge and manage his properties to collect income from all his assets and/or those that he has beneficial interest therein to be added as a signatory to the Bank Account at Kenya Commercial Bank Githunguri Branch, Account No xxxx to be able to run and operate it to pay for his medical needs pay workers in his tea farm and pay urgent bills and to the benefit of the health and sustenance of SMG.
2. The Petition was supported by a Supporting Affidavit sworn by SMG the Petitioner herein made on March 20, 2023 in which she deponed that the subject is her father who is aged 86 years old and has been diagnosed with Dementia and hypertension; that he is not able to make rational decisions on his medical treatments understanding formal documents, running accounts and managing his properties among others; as a result of the mental condition the subject is unable to take care of himself and is



thus fully dependent on the children. She urged the court to grant her guardianship over the subject for better management of his estate.

3. At the hearing of the Petition the Doctor who was attending to the subject testified on the subjects incapacity and medical treatment and produced the medical report marked as PExh.1; the surviving children of the subject consented to the Petitioner/Applicant being appointed guardian and manager of the subject's affairs. The consent dated December 20, 2022 is annexed to the Petition.
4. The Petition was unopposed

Issues for determination

5. Having perused the Petition, the application and upon hearing the expert evidence this court finds that the only issue framed for determination is whether the orders sought are merited.

Analysis__

6. Section 2 of the *Mental Health Act* Cap 248 provides that: -
 - ' A person suffering from a 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.'
7. Further on the issue relating to custody, management and guardianship is provided under Section 26 of the *Mental Health Act* Cap 248 which provides:
 - ' (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
 - c. 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.
 - d. Where upon inquiries 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 just 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.'



8. The Petitioner has adduced medical evidence that the subject is suffering from dementia and is unable to take care of his affairs. This condition has been confirmed by Dr Hezron Ochieng from Gawa Medical Services.
9. The Petitioner submits the subject is her father and her siblings have consented to her being granted the orders of interim guardianship and manager of the estate of the subject as per the consent attached to the Petition.
10. Upon observing the subject at the hearing hereof, it is evident the subject appeared confused and had difficulty expressing himself and that he was unable to comprehend or respond to simple greetings and instructions;
11. This court is satisfied that granting the Petitioner the orders sought would be in the best interest of the subject whom this court finds to be a person who requires to be managed as he has a mental disorder; this court is satisfied that this is a suitable case for the issuance of the orders sought as the subject is found to be a person in need to be properly taken care of and receive medical and personal care.

Findings and determination

12. For the foregoing reasons this court makes the following findings and determinations;
 - i. The Petition is found to have merit and it is hereby allowed.
 - ii. The subject herein **SMG** is hereby adjudged to be a person suffering from a mental disorder pursuant to Section 26 of the *[Mental Health Act](#)*;
 - iii. This court hereby appoints Petitioner **JW** to be the legal guardian and manager of the subject **SMG**.
 - iv. The petitioner shall act as the manager and guardian in respect to the affairs and estate of the subject, which shall not include distribution of her estate and shall in particular do the following:-
 - a. Manage the subject's health care;
 - b. Preserve the subject's estate including moveable property; receive monies and proceeds of his estate; execute and sign documents on behalf of the subject;
 - c. Utilize these proceeds to cater for the subject's medical expenses and maintenance;
 - d. Collect retirement benefits of the subject;
 - e. To render to family members and other beneficiaries regular yearly accounts on the status of the estate of the subject.
 - v. This being a family matter there shall be no order as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 28TH DAY OF JULY, 2023.

A. MSHILA

JUDGE

In the presence of :-

Mourice Court Assistant

Gakunga for the petitioner



