



REPUBLIC OF KENYA



KENYA LAW
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In re SMO (A Person Suffering from Mental Disorder) (Application E10 of 2023) [2023] KEHC 26012 (KLR) (28 November 2023) (Judgment)

Neutral citation: [2023] KEHC 26012 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
APPLICATION E10 OF 2023
RE ABURILI, J
NOVEMBER 28, 2023
IN THE MATTER OF S.M.O (A PERSON SUFFERING FROM MENTAL
DISORDER)
IN THE MATTER OF APPLICATION BY AAAS TO BE APPOINTED
AS
GUARDIAN AND MANGER OVER THE
AFFAIRS OF THE ESTATE OF SMO**

JUDGMENT

1. The applicant herein AAAS brought this application dated November 24, 2023 as the son to the subject SMO aged 65 years old, which application is necessitated by the diagnosis of a mental disorder of the subject thereby making her unable to manage herself and her affairs.
2. The applicant seeks orders that the subject SMO be adjudged as unfit to manage her affairs due to mental illness; that the applicant AAAS be appointed guardian and next friend of SMO a person of unsound mind and that AAAS be appointed as manager of the affairs of SMO a person of unsound mind.
3. The subject SMO was examined by Dr. Francis Matete of Kilimani Hospital, a specialist psychiatrist in 2020 and in January 2023, by Dr Tom Mboya Nyang'wara of Kisumu County Referral Hospital whereupon she was certified to be suffering from a schizoaffective Disorder.
4. Dr Mboya's examination confirmed that indeed, the subject was suffering from a mental disorder. When the application was brought before me for consideration, I directed that the subject be availed to court for its own inquiry and indeed, I had the opportunity to see and observe the subject in camera and I was satisfied that she had no mental capacity to manage herself or even her affairs. She was supported into court by the applicant. She cannot talk, she cannot respond to any communication, she was fumbling and restless, talking to herself inaudibly. According to the supporting affidavit sworn



by the applicant, the subject is unable to manage her affairs or care for herself due to this condition and requires constant care from the family.

5. I have considered all the material placed before me. I shall not delve into the detailed issues regarding the relationship between the subject and her estranged husband as those are matters that can be litigated upon in appropriate fora upon this court making appropriate orders in this matter.
6. The applicant invoked the provisions of sections 26 and 27 of the [Mental Health Act](#). 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

7. The definition 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.”

8. Based on the medical reports and affidavits on record, it is apparent that the subject suffers from a mental disorder and that the disorder has occasioned the diminution of the subject’s mental capacity and adversely affected her cognition and therefore ability to take care of herself and her affairs.
9. The applicant is her son hence he fits the description of a relative and suitable person as contemplated in the Act and there is no evidence that he has interests which are averse to those of the subject.
10. In the circumstances, this court makes a finding that the subject is a person suffering from a mental disorder within the definition of the [Mental Health Act](#) and is unable to manage herself and her affairs.
11. I hereby appoint the applicant herein AAAS as the subject’s guardian. Additionally, I hereby appoint the said applicant AAAS as the manager of the estate of the subject SMO.
12. For the avoidance of doubt, such manager’s general powers will not include the power of alienation, sale or transfer of the subject’s immovable assets 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 or to be brought by or against the subject in respect of any claims or assets forming part of her estate.

SIGNED, DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF NOVEMBER, 2023.

R.E. ABURILI

JUDGE

