



In re PMO (A person Suffering from Mental Disorder) (Family Miscellaneous Application E004 of 2023) [2023] KEHC 25767 (KLR) (23 November 2023) (Ruling)

Neutral citation: [2023] KEHC 25767 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
FAMILY MISCELLANEOUS APPLICATION E004 OF 2023
DO OGEMBO, J
NOVEMBER 23, 2023**

BETWEEN

AOO PETITIONER

AND

PMO SUBJECT

RULING

- 1 The Petitioner/applicant, AOO , has moved this court by way of a Notice of motion application dated 13/9/2023. This application is an ex parte application and is brought under Section 26(1) and 29 of the [Mental Health Act](#), Cap 248 Laws of Kenya. At this stage of the proceedings, it prays 3, 5 and 6 that are up for determination.
- 2 The said prayers are as follows: -
 - i. That an order do issue, adjudging the subject herein, PMO , to be a person suffering from a mental disorder under Section 26 of the [Mental Health Act](#), Cap 248 Laws of Kenya.
 - ii. That the applicant herein, AOO he appointed by this Honourable court as the subject’s legal guardian.
 - iii. That the applicant herein, AOO , by himself or his appointed agent, be and hereby appointed the manager of PMO estate, which includes any such descriptions of movable and immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to receive money or goods and to proceed to take over and or institute any litigation and or claims and also to include not only such property as has been originally in the possession or under the control of any property into or for which the same has been converted or exchanged, and anything acquired by such convention or exchange whether immediately or otherwise.



- 3 The Petitioner/Applicant has also prayed that costs of this application be provided for. The application is supported by the Affidavit of Petitioner/Applicant, sworn on 13/9/2023.
- 4 In the said Affidavit, the Applicant has deponed that the subject is his elder brother and he suffers from chronic mental illness (Bipolar I mood disorder) since 1984. A medical report and letter of the Chief were annexed to prove same. That the applicant is the one who has been caring for the subject. That the subject's land parcel number [particulars withheld] has been sub-divided by unknown people sometime in 2016. An official search certificate was shown.
- 5 It was further deponed that in his state of mind, the applicant could not consent to the sub-division, and that it is imperative that this application be allowed so that the applicant may stand in the subject's stead and protect his inherent rights to own property. And lastly, that the only surviving family member, a biological sister, one SAO , has consented to the applicant being appointed the subject's guardian and manager of his estate.
- 6 I have considered this exparte application, the Affidavit in support of the same and also the annexures to the same. The subject herein is the elder brother of the applicant. The letter from the Chief annexed dated 9-8-2023, confirms the position that the subject is not married and has no children and it is his younger brother, the applicant, who has taken care of him. The medical report of Dr. Bikoti George, Consultant Psychiatrist, Nakuru Level 5 Hospital dated 13/4/2023 confirms that the subject, 69, suffers from a chronic mental illness (bipolar 1 mood disorder) which started in 1984. In the same report, the Doctor recommends that any official transaction with the subject be done with the guidance or assistant of a close relative.
- 7 The Probation Officer's social inquiry report filed herein and dated 18-10-2023 following an order of the court, confirms the circumstances of this case as deponed to by the applicant, including the fact that the only surviving biological sibling of the applicant and the subject, one SAO , supports the prayers sought by the applicant.
- 8 Section 26 of the *Mental Health Act*, Cap 248, states;
- 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.
- 9 In light of the evidence presented before this court by the applicant, I am convinced that this application of the applicant dated 13/9/2023 has merit. I allow the same in terms of prayers 3, 5 and 6 as prayed. Costs of this application shall be in the cause. It is so ordered.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 23RD DAY OF NOVEMBER, 2023

D.O. OGEMBO

JUDGE

23.11.2023

Court:

Ruling read in Open court in the presence of Mr. Brian Otieno for Applicant.

D.O. OGEMBO



JUDGE

23.11.2023

