



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

PETITION CASE NO. E033 OF 2021

IN THE MATTER OF LKM (THE SUBJECT)

PETITION FOR GUARDIANSHIP OF LKM AND MANAGEMENT OF HIS ESTATE UNDER SECTION 26(1) AND SECTION 29 OF THE MENTAL HEALTH ACT CAP 248 OF THE LAWS OF KENYA

JUDGMENT

1. This petition is taken out by NMK wife of the subject.
2. The subject is 59 years old. He and the petitioner were married on 2nd September, 1988.
3. They are blessed with two children who are now adults.
4. The subject, as the medical report of the Brain, Spine & Rehabilitation Hospital (BSR) shows he is mentally unfit to transact any business. The medical report states:-

“Schizophrenic & Senile dementia – poor memory, violent, refusal to take medicine, talking to himself, poor appetite, refusal to eat and not bathing. The complains are progressive.”

5. NMK has brought this petition seeking orders as 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.”

6. **Section 27** of **Cap 248** is where the power of the manager in respect of the estate of one adjudicated as suffering from mental disorder are derived.

7. In the case ***In re NMK (2017) eKLR*** the court had this say of the provisions of **Sections 26 and 27** of **Cap 248**:-

“14. In considering an application brought under sections 26 and 27 of the Mental Health Act, the Court is guided by three main factors:

- a. *There must be medical evidence warranting the determination by the Court that the Subject suffers from mental disorder;*
- b. *The person to be appointed to be either a Guardian or Manager must be fit to be so appointed;*
- c. *The Court must be satisfied that a proposed Manager will utilize her powers for the benefit and welfare of the Subject.*

15. The overriding principles in applying all these factors is that the welfare and best interests of the Subject must be the overall guiding principle.

8. My examination of the medical records of the subject lead me to find that the subject is a person who is suffering from mental disorder, as defined in **Section 2 of Cap 248** as follows:-

“Person suffering from mental disorder” means a person who has been found to be so suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse;”

9. Having made the above finding, I enter judgment as follows:-

i. That LKM be and is hereby adjudged to be a person suffering from mental disorder.

ii. That NMK be appointed as guardian of LKM.

iii. That NMK be appointed as Manager of the estate of LKM of any such description of moveable or immoveable property, money debts and legacies, powers 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 proceeds to take over and/or institute any litigation claim(s) and also to include not only such property as has been originally in the possession or under the control of any person but also any property into or for which the same has been converted or exchanged, and anything acquired by such conversion whether immediately or otherwise.

iv. That NMK be granted leave to take over pending litigation on behalf of and for the benefit of the estate of LKM as guardian and to execute all court papers necessary for the filing of such litigation on behalf of and geared towards preservation, protection and realisation of the estate of any of the subject’s assets.

JUDGMENT, SIGNED DATED AND DELIVERED AT KIAMBU THIS 24TH DAY OF MARCH, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Mourice

For Petitioner : Mr. Wachira

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE