



REPUBLIC OF KENYA



EMK v GK (Petition 2 of 2022) [2022] KEHC 10936 (KLR) (20 May 2022) (Judgment)

Neutral citation: [2022] KEHC 10936 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO**

PETITION 2 OF 2022

AN ONGERI, J

MAY 20, 2022

BETWEEN

EMK PETITIONER

AND

GK RESPONDENT

JUDGMENT

- (1) The petitioner filed this Petition dated 2/3/2022 seeking the following Orders:-
 - (i) That G. K. (the subject) be declared a person suffering from mental disorder pursuant to section 26 of the *Mental Health Act* cap 243 Laws of Kenya.
 - (ii) That the petitioner be appointed Legal Guardian to the subject.
 - (iii) That the petitioner be appointed Manager of the estate of the subject Undersection 28 of the *Mental Health Act* to manage the Estate of the subject including handling his moveable and immovable property, money, debts and legacies and also have power to execute sign all deeds, titles and instruments relating to any right to any property or giving any right to receive any money or goods.
 - (iv) That the petitioner be appointed legal guardian to have power to represent the subject in court proceedings.
- (2) The Petition is supported by the affidavit of the petitioner dated 2/3/2022 in which he deposed as follows: -
 - (i) That the respondent sustained severe head injuries which resulted in brain damage when he was involved in a road accident on the 6th of September, 2020, along Litein-Sotik road, where he had been knocked down by a motor vehicle belonging to Nehemiah Kimutai Ngeno.



- (ii) That the respondent has been examined by two medical doctors who have awarded him a permanent mental disability of 100% and the respondent is therefore not mentally fit to manage his affairs, including bringing an action for compensation against the owner of the motor vehicle which caused the accident.
 - (iii) That as a result of the respondent's mental disability, the petitioner seeks to be appointed as the legal guardian of the respondent, to enable him manage the respondent's affairs.
- (3) The petitioner attached two Medical Reports as follows: -
- (i) A report by Dr Njau J W., a Consultant Psychiatrist dated 17/11/2021 stating that he examined the subject on 17/11/2021 and formed the opinion that he suffers from an array of mental symptoms resulting from head trauma which has resulted to cognitive impairment and behavioural sequence. The Doctor assessed the degree of Permanent Mental Disability at 100%.
 - (ii) A Medical Report by Dr willington K Kiamba dated 23/11/2021 stating that the subject was knocked down by a Motor Vehicle along Litein/Kapkatet Road on 6/9/2020 and was admitted at Litein Hospital in ICU for two weeks and subsequently discharged on none treatment. The Doctor said the subject displays the following disorders:-
 - (1) He is disoriented in time, space and person.
 - (2) He has lost his memory.
 - (3) He cannot concentrate.
 - (4) He cannot respond to questions.
- (4) Dr. Kiamba formed the opinion that the subject suffered brain damage due to the accident and this led to psychiatric illness. He is unable to engage in any gainful employment as he is permanently disabled. He assessed degree of disability at 100%.
- (5) I have considered the Medical Reports filed in respect of the subject.
- (6) I find that this Petition has merit and I allow it in the following terms:
- (i) That G. K. (the subject) be and is hereby declared a person suffering from mental disorder pursuant to section 26 of the *Mental Health Act* cap 243 Laws of Kenya.
 - (ii) That the petitioner be and is hereby appointed Legal Guardian to the subject.
 - (iii) That the Petitioner be and is hereby appointed Manager of the estate of the subject Under section 28 of the *Mental Health Act* to manager the Estate of the subject including handling his moveable and immoveable property, money, debts and legacies and also have power to Execute sign all deeds, titles and instruments relating to any right to any property or giving any right to receive any money or goods.
 - (iv) That the petitioner be and is hereby appointed legal guardian to have power to represent the subject in court proceedings.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 20TH DAY OF MAY, 2022

A. N. ONGERI

JUDGE

