



REPUBLIC OF KENYA



KENYA LAW

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KDKP (A Person Suffering from Mental Disorder) (Miscellaneous Application E003 of 2021) [2022] KEHC 10751 (KLR) (20 May 2022) (Judgment)

Neutral citation: [2022] KEHC 10751 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E003 OF 2021**

JN ONYIEGO, J

MAY 20, 2022

**IN THE MATTER OF SECTION 26,28 (1) AND 28(2) OF THE MENTAL
HEALTH ACT, CAP 248 LAWS OF KENYA
IN THE MATTER OF KDKP (A PERSON SUFFERING FROM MENTAL
(DISORDER) AND
IN THE MATTER OF AN APPLICATION BY PDP TO BE APPOINTED
GUARDIAN OVER THE AFFAIRS AND MANAGER OF THE ESTATE OF
KDKP**

JUDGMENT

1. PDP (hereinafter the petitioner) moved to this court vide application dated 22nd December, 2020 seeking orders that;
 - a. A declaration do issue that KDKP is suffering from a mental disorder pursuant to the *Mental Health Act* cap 248
 - b. That PDP be appointed as legal guardian of KDKP and manager over the affairs of his estate within Kenya
 - c. Costs of the petition be provided for.
2. The petition is anchored on grounds stated on the face of it and averments contained in the affidavit in support sworn by the petitioner on the 22nd December, 2020. The petitioner who is a brother to the subject (ward) herein stated that he is aware of his brother's chronic mental incapacitation due to depression hence the need for his protection. He attached a medical report (KDKP-2) to confirm his mental infirmity.
3. He averred that KDKP is a beneficiary of the estate of GDP wherein he and one BDP are executors. That the subject being a person who is incapable of reading, writing nor speaking coherently, is unable



to manage his share out of the estate of Godavariben hence the need to appoint a manager and or guardian to manage and safeguard his affairs and interest.

4. In support of this application, one RAKS a brother to the subject also swore an affidavit on 5th July, 2021 also supporting the petitioner. To further support the petition, RJ filed a consent by way of an affidavit sworn on 4th June, 2021 also supporting the application.
5. During the hearing, the petitioner (Pw1) basically adopted the content contained in the affidavit in support of the petition. He told the court that his brother (patient) has been of unsound mind for over 40 years and that he is the one who has been taking care of him. Pw1, Pw2, Pw3, Pw4 and Pw5 all siblings to the patient supported the petition.
6. Pw6 Dr Vinesh P Vaghela who also evaluated K's mental status concluded that he was suffering from global mental impairment associated with severe depression culminating to his inability to make any logical decision for his wellbeing owing to his poor judgment and unresponsiveness due to reduced cognitive function.
7. I have considered the application herein and the evidence by siblings to the patient.
8. The petition herein is expressed to have been filed pursuant to Sections 26 and 28 (1) and (2) of the *Mental Health Act*. Section 26 of the *Mental Health Act* provides 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.
9. Further, Section 2 of the *mental health Act* defines a person suffering from mental disorders as;

“...a person who has been found to be suffering under this Act and includes a person with mental illness and surfing from mental impairment due to alcohol or substance abuse”
10. From the evidence tendered before court by the siblings, doctor's evidence and the medical report thereof, it is apparent that the subject herein is mentally impaired to the extent that he is incapable of making independent decisions or discharge his day to day activities responsibly.
11. Lack of cognitive function is in itself a mental deficiency impairing any ordinary person from discharging his or her daily functions normally. In view of his mental incapacitation, it would be in his best interest and that of his estate that a guardian be appointed to take care of his affairs and manage his estate. See *JWN v MWK* (2020) e KLR



12. In the circumstances, I am persuaded to appoint the petitioner herein as guardian to the subject as well as manager to his estate with a caveat that the petitioner shall have no power to alienate, sell, dispose or transfer any of the subject's immovable assets. The petitioner shall however have powers and authority to sue , prosecute or defend any suit or action initiated for or against the subject or his estate in respect of the assets comprising his estate.

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

J .N. ONYIEGO

JUDGE

