



REPUBLIC OF KENYA



**In re Estate of GW (Petition E034 of 2021)  
[2022] KEHC 14714 (KLR) (31 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14714 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
PETITION E034 OF 2021  
MM KASANGO, J  
OCTOBER 31, 2022**

**IN THE MATTER OF THE MENTAL HEALTH ACT CAP 248 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF: AN APPLICATION BY J.B.W. BE APPOINTED  
GUARDIAN OVER THE AFFAIRS AND MANAGER OF THE ESTATE  
OF G.W. (A PERSON SUFFERING FROM MENTAL DISORDER)**

**IN THE MATTER OF**

**J.B.W ..... PETITIONER**

**AND**

**G.W ..... INTERESTED PARTY**

**JUDGMENT**

1. The petition hereof is brought under the [Mental Health Act](#), Cap 248. Cap 248 provides for the care of a person suffering from mental disorder, custody of such person and for management of the estate of such a person. Section 26 of Cap 248 affords the court the power to issue orders for management of the estate of the subject. Under Section 28 of Cap 248 the court is empowered to make orders concerning any matter of person suffering mental disorder.
2. The petition hereof is presented by JBW. The petitioner is the brother of the subject GW. The petitioner prays for orders that:-
  - a. The subject be declared as suffering from mental incapacity.
  - b. The petitioner be appointed legal guardian of the subject.
  - c. The petitioner be appointed manager of the subject and be authorised to administer the finances, properties and financial obligations of the subject.



3. The court received viva voce evidence of the petitioner and a sister of both the subject and the petitioner. The essence of that evidence is that the subject at one time worked in Kampala as an engineer. He began suffering mental illness in 1983. His then employer returned him to Kenya. He lived with the parent, who are since deceased. The last of the parents to die was the mother who passed away in 2010. Since then, the subject lives and is looked after by the petitioner his brother. During the lifetime of the parents, the subject's mental health continually deteriorated. He was receiving treatment at Mathari National Teaching and Referral Hospital. At one time, he was an inpatient at that hospital for 4 years. His health is managed by a medication. The local villagers who know of the subject's illness and his vulnerability have taken advantage of his condition. That the subject has been lured by such people by being given alcohol and in his drunken state those local people have forced the subject to sign sale agreement for the sale to them of the subject's inherited land.
4. That the petitioner intervened by stopping such individuals taking over the subject's inherited land and consequently one person filed a complaint with the police and the subject is presently facing a criminal charge for the offence of obtaining money by false pretences contrary to Section 313 of the *Penal Code*. When the criminal trial court was informed by the petitioner of the mental illness of the subject, the court requested for medical report. The court was supplied with a medical report dated November 19, 2015, February 21, 2017 and October 5, 2021 amongst others. Those reports state that the subject was born in 1954. He is single. He has been suffering from schizophrenia and alcohol dependency since 1989. He suffers oddity hallucinations and paranoid delusions. The letter of Mathari National Teaching and Referral Hospital dated October 5, 2021 well captures the state of mental health of the subject. In it, the hospital stated thus:-

“The Senior Principal Magistrate's Court

Githunguri

RE: Republic Versus G.W.

Criminal Case No. 947 of 2014

I am in receipt of your court order dated July 6, 2021 requesting for a Mental Status Evaluation. He was accompanied by his brother JBW. ID No. (withheld).

In reference to Medical report from this institution dated September 4, 2014, October 6, 2014, November 19, 2015 and February 21, 2017 the accused has been on follow-up for schizophrenia (a condition relapsing disorder characterised by bizarre beliefs and abnormal perception). Last review was on September 28, 2021.

Charged with – Obtaining in false pretence (As reported by the brother).

Mental Status Evaluation

Appearance : Unkempt. Eye contact: Avoided. Rapport: Difficult to establish. Speech: Poverty of speech

Further evaluation not possible.

Opinion

He is Not Fit to take plea.

Dr. Mucheru Wang'ombe

Specialist Psychiatrist

October 5, 2021.”



5. The mental illness of the subject was also confirmed by the Assistant Chief, Githunguri sub-county in a letter dated October 30, 2015.
6. Section 2 of Cap 248 defines one suffering from mental disorder as:-

“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.”
7. I am satisfied that the subject is suffering from mental disorder as provided under Cap 248. I am also satisfied that the petitioner and his sibling are well intended in bringing this action. It is for the safety and wellbeing of the subject whom the court was informed is unable to take care of himself even in the mundane everyday needs.

### **Disposition**

8. The judgment of this Court is as follows:
  - a. GW (the subject) is hereby declared to be suffering from mental disorder pursuant to Section 26 of the *Mental Health Act* Cap 248.
  - b. JBW is hereby appointed guardian of GW.
  - c. JBW is hereby appointed the manager of the estate of GW under section 28 and 30 of the *Mental Health Act* to manage G.W.'s estate which include any such description of moveable and immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing title or right to any property or giving a right to receive any money or goods.
  - d. JBW shall henceforth represent GW in court proceedings.

**JUDGMENT, SIGNED DATED AND DELIVERED AT KIAMBU THIS 31<sup>ST</sup> DAY OF OCTOBER, 2022.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant: Mourice/Julia

For Petitioners : Mr. Mitiambo

COURT

Judgment delivered virtually.

**MARY KASANGO**

**JUDGE**

