



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

(Coram: A. C. Mrima, J.)

PETITION NO. E006 OF 2021

IN THE MATTER OF TMG (TMG)

(A Person suffering from mental disorder)

AND

IN THE MATTER OF AN APPLICATION BY AWN TO BE APPOINTED

GUARDIAN OVER THE AFFAIRS OF AND MANAGER OF THE

ESTATE OF THE SAID TMG AWN.....PETITIONER

JUDGMENT

The Petition in this matter is dated 18th December, 2020. It was brought by **AWN** who is the wife of one **TMC** (hereinafter referred to as "**the subject**"). It is supported by Petitioner's Affidavit.

The Petitioner is legally married to the subject. A Certificate of Marriage which was celebration on 14th August, 2004 at the Holy Ghost Cathedral in Mombasa is annexed in the Affidavit. The couple are blessed with one son, IGM, born around 7 years ago. A Certificate of Birth is also annexed. The couple lives in their matrimonial home in Syokimau.

According to the Petition, the Affidavit and submissions, the subject suffered a massive ischemic stroke on the left MCA territory in February, 2020. He is currently aphasic with inability to talk and communicate coherently and is not possessed of any cognitive ability to perform any meaningful transactions.

It is deponed that the subject is under a Care-giver. The Care-giver needs to be catered for. The Petitioner avers that she is financially unable to fully cater for the needs of the family and the subject as at now.

Relying from the foregoing, the Petitioner seeks for the prayers in the Petition.

I have carefully considered the Petition, the Affidavit, the annexures and submissions.

Section 2 of the *Mental Health Act* defines a "**person suffering from mental disorder**" as follows: -

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 of substance abuse.

There is on record a Medical Report by Dr. Vincent D. Wekesa, a Consultant Neurosurgeon. It is dated 2nd December, 2020. The report confirms that the subject is unable to perform any meaningful informed transaction as a result of the ischemic stroke suffered in February, 2020.

The condition has no doubt occasioned the diminution of the subject's mental capacity and adversely affected his cognition and the ability to

take care of himself and his affairs. He is currently under a Care-giver.

Having taken the totality of these matters into account and by dint of *Sections 28 and 29* of the Mental Health Act, the following orders do humbly issue: -

a) This Court hereby finds that the subject, TMG, is a person suffering from mental disorder within the definition of the Mental Health Act;

b) This Court hereby appoints the Petitioner herein, AWN, as the subject's guardian. Additionally, the Court appoints the said AWN as a Manager of the estate of the subject. For avoidance of doubt, the Manager's powers will not include the power of alienation, sale or transfer of the subject's immovable assets but will include all such powers as necessary for the management of such and other assets including the power to access and operate the subject's KCB Bank Account No. [...] – Moi Avenue.

c) No orders as to costs.

DELIVERED, DATED and SIGNED at NAIROBI this 20th day of January 2021.

A. C. MRIMA

JUDGE

Judgment delivered virtually before:

Miss Otieno, Counsel for the Petitioner.

AWN, the Petitioner.