



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISCELLANEOUS CIVIL APPL. NO. E073 OF 2020

IN THE MATTER OF JLB (SUBJECT)

SRR..... APPLICANT

RULING

(1) Before Court is the Petition dated **18th December 2020** by which SRR (“**the Petitioner**”) seeks the following orders:-

“1. THAT the Petitioner manage the affairs of the Patient and be granted powers in relation to the same including but not limited to accessing the Patients Bank accounts and matters relating to taxes, issues relating to the Patient.

2. THAT the costs of this application be in the cause.”

(2) The application was supported by the Grounds on the face of the Summons and the Affidavit of even date sworn by the Petitioner.

(3) The Petitioner appeared before the Court on the online platform on **5th February 2021**. She told the Court that the Subject herein **JLB** is her sister. That the Subject is currently in a Nursing Home in the **Karen area of Nairobi** for the past **five (5) years** as she has suffered mental issues arising from Schizophrenia. The Petitioner seeks to be granted Guardianship orders to enable her manage the affairs of the Subject and to access funds to cater for the Subjects upkeep as the Subject is not in a position to manage her own affairs.

(4) **PW2 MLL** told the Court that she too is a sister to the Subject. **PW2** lives in Sweden. She confirmed the fact that the Subject is seriously ill and has been housed in a Nursing Home in Nairobi for the past **three (3) years**. **PW2** told the Court that she is aware of and has no objection to the present application or Guardianship. She added that the petitioner was best placed to manage the affairs of the Subject.

(5) **Section 26** of the **Mental Health Act, Cap 248** provides for the situations in which Courts may make orders for custody, management and maintenance of a Patient (Subject). **Section 26** provides:-

“Order for custody, management and guardianship

(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) Where upon 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.”

(6) I have considered the present application and I have carefully perused the documents annexed in support thereof. A confidential Medical

Report dated **2nd November 2020** (Annexure ‘**JKM1**’) from **Gilead Mental Health Consultants** confirms that the Subject suffers mental illness. Specifically the Subject has been diagnosed with Schizophrenia. It was confirmed that the Subject has been living in a Nursing facility since **March 2018**.

(7) The author of the letter **Dr. J. K. Mutiso**, a Specialist Psychiatrist opined that due to the chronic mental illness the Subject has no capacity to care for herself. That her cognitive and mental capabilities have been severely compromised and that she is not in a position to manage her own affairs. The Doctor recommended that a Guardian be appointed for the Subject in accordance with the law.

(8) Annexure ‘**SRR 1**’ is letter of consent in support of this Petition for Guardianship signed by **RKL – B** a brother to the Subject.

(9) From the material availed to this Court it is evident that the Subject is incapable of managing her own affairs due to her mental illness. The Subject resides in a Nursing Home where payments are required not to mention payments required for medical consultation and medication.

(10) The Subject is not married and has no children. As such the Petitioner who is her sister is best placed to manage her affairs. Indeed in her Affidavit dated **18th December 2020**, the Petitioner has averred that she has since **2009** been assisting the Patient in making legal and financial decisions. The other siblings of the Subject have given their consent in support of this application for Guardianship.

(11) I am satisfied that the Subject **JLB** suffers from mental illness rendering her incapable of managing her own affairs. Accordingly I do allow this Petition and direct that the Petitioner **SR** is hereby appointed as Guardian to manage the Estate of the Patient, and is granted powers in accordance thereto.

Dated in **Nairobi** this **12th** day of **February, 2021**.

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MAUREEN A. ODERO

JUDGE