



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISCELLANEOUS APPLICATION CAUSE NUMBER 4 OF 2020

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

AND

IN THE MATTER OF MWM

JWM

BNM

MMM

FKM.... PETITIONERS

Petition for guardianship of MMM and management of his estate under Section 26 and 28 of the Mental Health Act, Cap 248 of the Laws of Kenya

RULING

1. Before me is the Petition dated 27th May, 2020 brought under the **Mental Health Act Cap 248 of the Laws of Kenya**.
2. It is brought in respect of MWM whereby her children; JWM, BNM, MMM are seeking the guardianship of their mother, and the management of her estate under **Section 26 and 28 of the Mental Health Act Cap 248 Laws of Kenya**.
3. The grounds for the Petition are set out on the face of the Petition and in the Verifying Affidavit sworn by the petitioners on 27th May, 2020, together with the annexures therewith, viz: the medical report from hospital and the recommendation from Bahati District Hospital that the subject suffers from Alzheimer's.

The grounds as set out are that: M is a person suffering from a mental disorder within the meaning of the Mental Health Act Cap 248 of the Laws of Kenya and therefore fails within the ambit and jurisdiction of the said Act.

That she is 87 years old and is currently domiciled at Nakuru.

That she suffers Alzheimer's disease and shows severe cognitive decline characterized by memory loss, severe impairment of language, judgment, orientation and other intellectual capacities. She has difficulties in communicating, is also incapable of handling her money and finances. She requires assistance of care givers to perform day to day activities. All this is founded on the medical and psychiatrist report submitted by Bahati Hospital annexed to the Petition

The Petitioners seek the following orders;

- (a) THAT MMM be adjudged to be a person suffering from a mental disorder under Section 26 of the Mental Act Cap 248 of the Laws of Kenya.
- (b) THAT JWM, BNM, MMM and FKM be appointed as the Managers of her which includes any such description of movable and immovable property, moneys and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods and to proceed to take over and/or institute any litigation and/or claims and also to include not only such property as has been originally in the possession or under the control of any person but also

any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.

(c) THAT JWM, BNM, MMM and FKM be appointed as Guardians of her estate.

4. Pursuant to directions by the Hon. Lady Justice Mulwa on 28th May, 2020, the applicants provided copies of their identity cards and a letter from the home area of the subject through the Supplementary Affidavit of JWM sworn on 24th August 2020.

5. The letter from the chief states:

“Office of the Assistant Chief

Free Area Sub-location

P.O. Box 81,

NAKURU.

12/6/2020.

To the Chief Magistrate,

Nakuru Law Courts.

REF: MWM ID NO. XXXXXXXX

The above named Senior Citizen resides in my area of jurisdiction. She suffers from Alzheimer’s disease and cannot therefore be able to conduct any kind of transaction. She stays under the care of her two daughters JWM and BNM.

The persons listed below are her children.

1. BNM – daughter – aged 70 years – ID NO. XXXXXXXX
2. CWM – daughter – aged 62 years – ID NO. XXXXXXXX
3. JWM – daughter – 63 years –ID NO. 0XXXXXXXX
4. FKM – son – 60 years –ID NO. XXXXXXXX
5. MMM – son – 58 years – ID NO. XXXXXXXX
6. VNM – daughter – 57 years – ID. NOXXXXXXXX
7. JKM – son – 56 years – USA ID. NO. XXXXXXXX
8. SNM – daughter – 53 years – ID NO. XXXXXXXX
9. HWM – daughter – 49 years – ID NO. XXXXXXXX

All assistance accorded to the above named person would be highly appreciated.

J. N. KIMANI,

FOR ASSISTANT CHIEF,

FREE AREA SUB-LOCATION.”

6. There is also a consent dated 24th August 2020 by the children of the subject supporting their siblings Petition. These are namely. CWM, VNM, JKM, SNM and HWM.

7. I have carefully considered the Petition, the Supporting Affidavit and the main reason for the application. The issue is whether the orders sought are tenable.

8. The petitioners and the persons who have signed the consent were identified by the letter from the area assistant chief as the children of the

subject. In addition they have annexed their identity cards.

9. The doctor's letters indicate that the subject suffers from Alzheimer's; one is dated 24th July 2010 from Elizabeth Medical Center shows that that at the time she was diagnosed with the disease she was 78 years old. The other dated 30th May 2019 says it was from when she was 84 years. That besides it established that she is disoriented in time and place and has both physical and mental disability and is bound to a wheelchair.

10. The relevant provisions of **Section 26 of the Mental Health Act** state;

“S. 26. 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) ...

(3) ...

Similarly **Section 28** of the same Act provides;

“S.28. Power to make order concerning any matter with the person

(1) The court may, upon application made to it by petition concerning any matter connected with a person suffering from mental disorder or with his estate, make such order, subject to this Part, regarding such application as, in the circumstances of the case, the court may think fit.

(2) The Minister, the Public Trustee or a manager may take out, as a matter of course, an application in chambers for the determination of any question arising out of the management of any estate in respect of which an order has been made under this Part.”

11. From the documentation placed before me it is evident that the subject herein suffers from a mental condition that has rendered her incapable of managing her own affairs. She is dependent on her children to take care of her. The petitioners have been identified by the chief of the home area of the subject. They have also produced their identity cards confirming their identities. It is only in order that they also take care of her estate. I find that the application is merited and grant the following prayers.

12. Subject to **Section 33 of the Mental Health Act** which states;

“S. 33. Manager to furnish inventory and annual accounts

(1) Every person appointed by the court to be manager of the estate of a person under this Part shall, within six months of the date of his appointment, deliver to the court and to the Public Trustee (to whom he shall pay such fee as may be prescribed) an inventory of the property belonging to the person of whose estate he has been appointed manager and all such sums of money, goods and effects as he receives on account of the estate, together with a statement of all debts owed by or due to such person, and every such manager shall furnish to the court and to the Public Trustee (to whom he shall pay such fee as may be prescribed) annually, within three months of the 31st December, an account of the property in his charge showing the sums received and disbursed on account of the estate during the year and the balance; such inventory, statement and account shall be in the prescribed form.

(2) Any person may, on payment of such fee as may be prescribed, inspect and obtain a copy of any inventory, statement or account delivered to the court and to the public Trustee under subsection (1).

(3) The Public Trustee shall report to the Minister annually on all accounts delivered to him under subsection (2).

(4) Where any person, by petition to the court, impugns the accuracy of any inventory or statement or of any annual account made under this section, the court may summon the manager and inquire summarily into the matter, and make such order as it thinks proper or the court may refer the petition to a magistrate having jurisdiction in the place where the property belonging to the estate concerned is situated, for inquiry and report, and upon receipt of the magistrate's report the court may make such order as it thinks fit.

13. The following orders issue:

(a) MWM, the subject herein be and is hereby adjudged to be a person suffering from a mental disorder under Section 26 of the

Mental Act Cap 248 of the Laws of Kenya.

(b) The Petitioners JWM, BNM, MMM and FKM be appointed as Guardians of MWM

(c) The Petitioners JWM, BNM, MMM and FKM be and are hereby appointed as the Managers of the estate of MWM. This shall include any such description of movable and immovable property, moneys and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to receive any money or goods and to proceed to take over and/or institute any litigation and/or claims and also to include not only such property as has been originally in the possession or under the control of any person but also any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.

14. Hence,

1. This order be served on the Public Trustee.

2. The matter be mentioned in six (6) months on 5th August 2021 for the managers herein appointed to provide the court with the requisite inventory.

3. Orders accordingly.

4. Costs in the cause.

Dated this 5th Day of February 2021.

Mumbua T. Matheka

Judge

Delivered virtually this 11th February 2021.

Mumbua T. Matheka

Judge

N/A for Munene Chege & Co advocates though notified