



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BOMET**

**FAMILY DIVISION**

**PETITION NUMBER 1 OF 2021**

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

**AND**

**IN THE MATTER OF K ARAP M**

**(A PERSON SUFFERING FROM MENTAL DISORDER)**

**AND**

**IN THE MATTER OF AN APPLICATION BY DKC, DKC, JKC AND SKC**

**RULING**

1. The four Petitioners namely DKC, DKC, JKC and SKC are the sons of K Arap M (hereafter Subject). They have approached the Court under the Mental Health Act (Cap 248) Laws of Kenya for the following Orders:

- a) **The Subject, KM be adjudged to be a person suffering from a mental disorder.**
- b) **An Order that the Petitioners be appointed the joint guardians of K Arap M.**
- c) **An Order that the Petitioners be appointed the Managers of the estate of K Arap M.**
- d) **A special permission be granted to the Petitioners to activate, access and jointly transact on the account number being Barclays/Absa account number 029xxxxxx for the interest of K Arap M and the dependants of the subject.**
- e) **An order that Safaricom PLC release the due rent consideration for the years not remitted to the aforesaid account for access, transaction and or management by the guardians.**
- f) **Costs of and or incidental to this Petition.**
- g) **Such other and further Orders as this Honourable Court may deem just to grant.**

2. The Petition was supported by the sworn Affidavit of the 1<sup>st</sup> Petitioner DKC filed on 2<sup>nd</sup> February, 2021. Attached to the Affidavit were the authority to depone granted by his co-petitioners and minutes of a family meeting held on 29<sup>th</sup> December, 2020 by the subject's family. The minutes indicate that the family met and discussed the health status of the family patriarch and agreed to nominate his sons the petitioners to take charge of the family affairs due to his advanced age and ill health. Nine family members being the sons of the Subject from his two households are stated to have attended the meeting and signed an attendance list which form part of the minutes.

3. The Petitioner also attached the death certificate of their mother one TCM and a copy of a letter written by the Chief of Kimaya Sub-location dated 31<sup>st</sup> December 2020 and addressed to the Manager, Barclays Bank Bomet Branch indicating that the subject was old and unable to manage his bank account. The letter also indicated that the family had nominated the Petitioners to manage the Subject's account.

4. The Petitioners acting in person appeared before me on 10<sup>th</sup> February 2021 and asked to be granted the special orders on the face of the application. The court directed that the Subject be taken to a Psychiatrist who would examine him, file a medical report in court and later attend court to testify. The court further directed the Petitioners to file a consent signed by all the immediate family members of the Subject and thereafter attend the hearing scheduled for 24<sup>th</sup> February, 2021.

5. The Petitioners along with their other siblings and mother E.M appeared before me on 24<sup>th</sup> February 2021. I examined the Petitioners and their mother E.M on the welfare of the Subject and the averments contained in the affidavit of the 1<sup>st</sup> Petitioner. They confirmed the averments and also indicated that they had no objection to the four Petitioners being appointed guardians by the court. EM the Subject's surviving wife told the court that her husband was of advanced age and unable to manage his affairs. She also stated that she could not step into his shoes as she was also of advanced age. She confirmed that she was aware of, and supported the action taken by the Petitioners.

6. The 1<sup>st</sup> Petitioner drew the attention of the court to the Psychiatrist's report filed on 24<sup>th</sup> February 2021. He also told the court that they had brought their father to court because the Psychiatrist who examined him was unable to attend court.

### **Determination**

7. From the foregoing, the issues to be determined by this Court are:-

(i) Whether the Subject should be declared as suffering from a mental disorder as envisaged by Section 26 of the Mental Health Act, Cap 248 of the Laws of Kenya.

(ii) Whether the Petitioners are fit persons to be appointed as guardians of the Subject as well as managers of the estate of the Subject

8. The Mental Health Act provides for the care of persons who are suffering from mental disorder, custody of such persons and for the management of the estate of such persons. Section 26 grants the Court powers to issue orders for management of the estate of the Subject and for their guardianship by any near relatives or any suitable persons. Section 28 provides for orders for the management of the Subject's estate.

9. In considering the application, this Court is guided by three main factors:-

(i) There must be medical evidence warranting the determination by the Court that the Subject suffers from mental disorder.

(ii) The persons to be appointed either managers or guardians must be fit to be appointed.

(iii) The Court must be satisfied that the proposed managers will utilize their powers for the benefit and welfare of the Subject.

10. The overriding guiding principle in applying the aforementioned factors is the welfare and best interests of the Subject.

11. In the medical report filed in court on 24<sup>th</sup> February 2021, Dr. Njau J.W, Consultant Psychiatrist who examined the subject concluded that:-

***“KM (99 years) is an elderly man who suffers from a progressive age related degenerative neurological disorder which has caused significant decline from his previous level of functioning and currently he does not know the nature or extent of his properties or number of names of his children. He has no ability to make sound judgment to weigh, to reason out or make reasonable decision and has no insight to the nature of her disturbance.”***

12. It is clear from the assessment above that the report supports the Petitioner's application. It is therefore not disputed that the Subject is suffering from a mental disorder, a medical condition contemplated under Section 26 of the Mental Health Act.

13. It was also clear to me from my examination of the various family members, that the family meant well for their father whom from my scrutiny of his national identity card, was born in 1922 and was undoubtedly of advanced age. I am also satisfied that the family was in agreement with regard to the purpose of the application and were supportive of the four petitioners being appointed guardians. I am satisfied that they are fit persons to be so appointed.

### **Disposition**

14. I grant the following orders:-

**(i) That KAM (the Subject) is hereby declared to be suffering from mental disorder pursuant to Section 26 of the Mental Health Act, Cap 248 of the Laws of Kenya.**

**(ii) DKC, DKC, JKC and SKC are hereby appointed joint legal guardians to KAM.**

**(iii) DKC, DKC, JKC and SKC are hereby appointed joint managers of the estate of KAM under Section 28 of the Mental Health Act to manage his estate which include any such description of moveable or immoveable property, money, debts 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. For avoidance of doubt, this Order does not include distribution of the estate of KAM within the meaning of succession law.**

**(iv) The legal guardians herein appointed, are granted authority (subject to the Bank's obtaining regulations) to operate the Subject's Account Number 029xxxxxxx at Absa Bank.**

(v) The legal guardians are granted the legal right to receive into the Subject's account aforesaid any monies owing to the Subject in rent arrears from Safaricom PLC.

(vi) The legal guardians shall represent the Subject in Court proceedings.

(vii) The legal guardians shall regularly render to the family members and future beneficiaries an account of the status of the estate of the Subject.

15. Orders accordingly.

**Ruling delivered, dated and signed this 18<sup>th</sup> day of March, 2021.**

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**R. LAGAT-KORIR**

**JUDGE**

**Ruling delivered in open court in the presence of Kiprotich (Court Assistant) and the Petitioners in person**

**i. DKC**

**ii. DKC**

**iii. JKC**

**iv. SKC**