



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**PETITION CASE NO. E009 OF 2021**

**IN THE MATTER OF FMG (A PERSON SUFFERING FROM MENTAL & PHYSICAL INCAPACITY)**

**RWM.....PETITIONER**

**JUDGMENT**

1. **FM** was attacked by unknown people on 25<sup>th</sup> March, 2019. The DCI Kiambaa has written a letter dated 10<sup>th</sup> November, 2020 confirming the same. That letter is in the following terms:-

***“NATIONAL POLICE SERVICE***

***DIRECTORATE OF CRIMINAL INVESTIGATIONS***

***CID/KBU/CRI/4/4/6/VOL.II/152 10<sup>th</sup> November, 2020***

***RE: TO WHOM IT MAY CONCERN***

***This office is investigating a case of attempted murder that was reported vide OB No. 42/25/3/2019 of KARURI POLICE STATION.***

***The brief facts are that FM. was attacked on her way home by unknown people. She sustained serious injuries on the head that has left her mentally incapacitated.***

***Investigations are still underway to bring the culprits to book.***

***Any assistance accorded to RWM who is the mother to FM will be highly appreciated.***

***(JOHN TOO***

***FOR: SCCIO KIAMBAA”***

2. There is also a medical report dated 24<sup>th</sup> October, 2020 from Belevue South B hospital which confirms the health status of **FM** It was in that hospital that **FM** was admitted after her attack. In part, that report states:-

***“She (FM) was discharged home for total nursing care and physiotherapy. She is currently totally incapacitated and totally dependent. She is not able to talk, eat normally or respond to verbal or visual commands and has weakness of hands and legs due to the injuries and is bed ridden. She is currently in a vegetative state and requires constant 24 your nursing care and physiotherapy.”***

3. A petition has been filed by RWM, the mother of FM seeking FM be declared as a person suffering from mental disorder, that the court to appoint RWM her guardian with power to manage the estate and affairs of FM with power to access and withdraw funds from Co-operative Bank of Kenya and to use those funds to cater for FM’s nursing care.

4. The orders sought by **RWM** are provided for in **Section 26** of the Mental Health Act which section 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) Whereupon 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.”**

5. The application of that Section and guideline of what should be considered was discussed in the case of **IN RE NMK (2017) eKLR** as follows:-

**“14. In considering an application brought under sections 26 and 27 of the Mental Health Act, the Court is guided by three main factors:**

**a. There must be medical evidence warranting the determination by the Court that the Subject suffers from mental disorder;**

**b. The person to be appointed to be either a Guardian or Manager must be fit to be so appointed;**

**c. The Court must be satisfied that a proposed Manager will utilize her powers for the benefit and welfare of the Subject.**

**15. The overriding principles in applying all these factors is that the welfare and best interests of the Subject must be the overall guiding principle.”**

6. From what is stated above it will be seen that RWM has met the criteria in the above case. She has provided credible medical evidence showing FM is suffering from mental impairment. RWM being the mother of FM she is the ideal person to be appointed her guardian and because of that relationship it is clear that RWM will utilize the funds in the case of FM.

7. It is because of the above finding I order as follows:-

(a) FM is hereby declared to be suffering mental disorder pursuant to Section 26 of Mental Health Act.

(b) RWM is hereby appointed guardian of FM.

(c) RWM is hereby appointed manager of the Estate of FM under **Section 28** of the **Mental Health Act** to manage her estate including any such description of moveable or immovable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to evidencing title or right to any property or giving rights to receive any money or goods.

(d) RWM shall have access to FM's bank account No. [xxxx] at Co-operative Bank of Kenya and RWM shall have power to utilize such funds as are necessary to cater for FM's nursing care and physiotherapy and other medical needs.

(e) There shall be no orders as to costs of this petition.

**JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 27<sup>TH</sup> DAY OF MAY, 2021.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant : Ndege

For the Petitioner: No appearance

**COURT**

Judgment delivered virtually.

**MARY KASANGO**

**JUDGE**