



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISC. CAUSE NO. 21 OF 2018

IN THE MATTER OF SECTION 26, 27, 28 AND 29 OF THE MENTAL HEALTH ACT CAP 248, LAWS OF KENYA

AND IN THE MATTER OF AWK (A PERSON SUFFERING FROM MENTAL DISORDER)

AND

IN THE MATTER OF AN APPLICATION BY HWK AND HKK TO BE APPOINTED GUARDIANS OVER THE AFFAIRS AND MANAGERS OF THE ESTATE OF THE SAID AWK

RDWK.....1ST PETITIONER

HKK.....2ND PETITIONER

JUDGMENT

1. Before this Court is the Petition dated **28th February 2018** by which the Applicant seek the following orders:-

- 1. THAT the said AWK be declared to be suffering from mental disorder pursuant to Section 26 of the Mental Health Act (Cap 248) Laws of Kenya;**
- 2. THAT this Honourable Court to be pleased to appoint the Petitioners jointly as guardians of the affairs of AWK in accordance with the Mental Health Act;**
- 3. THAT this Honourable Court be pleased to appoint the Petitioners jointly as Managers of the estate of AWK in accordance with the Mental Health Act with special permission pursuant to Section 27(1) 9a) of the Mental Health Act to lease and/or dispose off the movable and immovable property of which the estate may consist;**
- 4. THAT the costs of this amended Petition be borne by the estate.**

2. The Petition was supported by the Affidavits of even date sworn by **HWK** (the 1st Petitioner) and a second Affidavit sworn by **HKK** (the 2nd Petitioner).

3. The Petition was canvassed by way of viva voce evidence on the virtual platform. The Petition was initially opposed by one of the children of the Subject. However the court was informed that this Objector unfortunately passed away on **20th May 2021**. **Mr. Waweru Kihara** Counsel for the said Objector confirmed the fact of her demise and on **3rd June 2021** told the Court that they wished to withdraw the Objection.

4. The Applicants told the Court that the Subject (Patient) **AWK** who was their biological mother is a **74 year old** woman who had previously been in good health. However in the year **2015** the Subject became increasingly forgetful and erratic in her behavior. That the Subject was in the year **2017** diagnosed with **Dementia** a progressive condition. As a result she required specialized medical care and nursing care.

5. The Petitioners state that the Applicant owns several rental properties but in her current condition the Subject is not in a position to manage her own affairs. They seek to be appointed as Guardians over the Subject and Managers of her estate.

6. **PW3 JNK** was also a biological child of the Subject and brother to the two Petitioners. He told the Court that he was aware of and fully

supported the Petition.

7. I have carefully considered this Petition, the Supporting affidavits as well as the evidence adduced before the Court. **Section 26** of the **Mental Health Act, Cap 248, Laws of Kenya** provides for the circumstances in which a Court may make orders for the management and maintenance of a Patient (Subject) as follows:-

“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.” [own emphasis]

8. The Petitioners told the Court that their mother fell ill in **2015**. That she has been hospitalized twice due to her ailment. They state that the Subject became forgetful, erratic and suffered hallucinations. I have perused the medical Report dated **12th October 2017** prepared by **DR. MONICA EVA WANJERI MUCHERU – WANG’OMBE OF THE HEALTHY Mind Consultants in Westlands, Nairobi** (Annexure “**HWK-2**”) to the Supporting Affidavit dated **28th February 2018**. The doctor upon examining the Subject found that she suffered paranoid and persecutory delusions, she had a poor fund of knowledge and had impaired judgment. The Subject was diagnosed as suffering from “**Dementia with Hallucinations.**” The condition as said to be both chronic and progressive and the Doctor stated that the Subjects ability to make rational decisions was impaired.

9. The Court was able to see the subject via the online platform. She was a feeble elderly woman lying in a bed and was not able to communicate effectively with the Court. Based on the medical report produced in Court and from my own observation it is clear that the Subject suffers mental incapacity. She is clearly not in a position to manage her own affairs.

10. In view of her condition the Subject requires constant medical attention and round the clock care. I note that the 3rd child of the Subject one **JK** who resides with his mother stated that he fully supported this Petition for Guardianship.

11. In conclusion I find that this Petition has merit and I do allow the same. Accordingly this Court makes orders as follows:-

1. The Subject **AWK** be and is hereby declared to be suffering from mental disorder pursuant to **Section 26** of the **Mental Health Act, (Cap 248), Laws of Kenya**.
2. The Petitioners **HWK** and **HKK** are jointly appointed as the Guardians of the Affairs of **AWK**.
3. The Petitioners **HWK** and **HKK** are jointly appointed as Managers of the estate of **AWK**.
4. No orders on costs.

DATED IN NAIROBI THIS 30TH DAY OF JULY, 2021.

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MAUREEN A. ODERO

JUDGE