



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISCELLANEOUS APPLICATION NO. E071 OF 2020

IN THE MATTER OF SECTION 26 & 28 OF THE MENTAL HEALTH ACT

AND

IN THE MATTER OF ESTATE OF MGMK (PATIENT)

AND

IN THE MATTER OF AN APPLICATION BY MMK TO BE APPOINTED THE GUARDIAN AND MANAGER OF THE ESTATE OF MGMK (PATIENT)

JUDGMENT

(1) Before this court is the Petition dated **9th December 2020** by which the Petitioner **MMK** seeks from the Court the following orders:-

(a) THAT the Patient namely MGMK be adjudged to be a person suffering from a mental disorder under Section 26 of the Mental Health Act Cap 248 of the Laws of Kenya.

(b) THAT the Petitioner namely MMK be and are hereby appointed as Manager and Guardian of the Patient namely MGMK.

(c) THAT the Petitioner shall act as Manager and guardian in accordance with the directions and orders of the Court and in particular do the following:-

(i) Manage the Patient's health care;

(ii) Have access and operate the Patients bank accounts;

(iii) Execute documents on behalf of the Patient;

(iv) Make decisions and handle the Patient's statutory payments to the government with regards to his NHIF and NSSF payments.

(d) THAT the costs and legal fees of this application be provided for from the Patient's estate.

(2) The Petition was supported by the Affidavit of even date sworn by the Petitioner and is further supported by Affidavits (Consents) sworn by **RMK** and **SKK**.

(3) The Petition was canvassed by way of viva voce evidence on the online platform. The Petitioner told the Court that the Subject (Patient) **PROF. MGMK** was a father to herself and her two siblings. She told the Court that the Subject has been diagnosed with Dementia. That he requires 24 hour care. The Petitioner states that she lives with the Subject in her home in order to ensure that he is properly taken care of. The Petitioner stated that due to his condition the Subject is not in a position to manage his affairs. She prays to be appointed as Guardian and Manager for the Subject.

(4) **PW2 SKK** and **PW3 RMK** are also the children of the Subject. They both confirm that their father suffers from Dementia and confirm that he is currently living with the Petitioner who is their sister. Both **PW2** and **PW3** state that they are in support of this Petition and express their confidence that the Petitioner is best placed to cater for the interests of the Subject, hence their support for her application

seeking Guardianship.

(5) **Section 26** of the **Mental Health Act, Cap 248** 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]

(6) I have considered the Petition herein and I have carefully examined the documents annexed thereto. A Medical Report dated **9th November 2020** (Annexure ‘MMK-3’) prepared by a **DR. HERMAN EKEA** a Consultant Neurologist based at the **Aga Khan Hospital, Nairobi** indicates that the Subject was just seen in the Clinic on **14th January 2020**. The subject who was a **66 year** old man was found to be suffering from Paranoid Delusions. His family members reported that the Subject believed that he could converse with the television set.

(7) Further, blood tests revealed elevated Alzheimers disease markers. The Subject however had no insight into his illness. The Doctor opined that the Subject had become incapacitated in decision-making and handling of financial decisions. That he suffered **“visual auditory and visual hallucinations”** and that he required moderate assistance with activities of day to day living.

(8) A second medical report on the condition of the Subject dated **19th November 2020** was prepared by **DR. ALPHONCE KHAOYA NABISWA**, a Consultant Psychiatrist. (Annexure ‘MMK-3’). This report indicated that after examination of the Patient the Doctor made a diagnosis of **Major Neurocognitive Disorder (Alzheimers Disease) with Psychosis**. The Report indicated that the condition of the Subject was likely to worsen and this Doctor opined that the Subject had **no capacity** to manage his affairs or make decisions regarding his finances or health. These two medical reports clearly indicate that the Subject suffers from a mental illness and that he is not capable of managing his own affairs.

(9) The Court was able to see and talk to the Subject online. He was well dressed and neat but appeared unable to recall the identity of his daughter (the Petitioner) who was seated next to him. The Subject told the Court that he was **‘confused’** and did not know what was going on. It was clear to me that the Subject suffers mental challenges and clearly has no capacity to manage his own affairs.

(10) The Subject is a divorcee and his children are all in agreement with this Petition for Guardianship. The Subjects two other children have both signed consents to the Petition and both confirmed their consents to the Court. The Subject currently lives with the Petitioner in her home. The Petitioner has hired a live in nurse to assist in caring for her father and provides for his medical care and treatment.

(11) Based on the material availed to this Court I am satisfied that the Subject suffers from a mental illness under the terms of the **Mental Health Act**. I am satisfied of the merit of this Petition and I hereby allow prayers (a) (b) (c) and (d) of the Petition dated **9th December 2020**. The Petitioner **MMK** is appointed as Guardian and Manager for the Subject **Prof. MGK**.

DATED IN NAIROBI THIS 25TH DAY OF JUNE, 2021.

.....

MAUREEN A. ODERO

JUDGE