



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

FAMILY DIVISION

PETITION NO. E00 8 OF 2021

**IN THE MATTER OF: MENTAL HEALTH ACT (CHAPTER 248 OF
THE LAWS OF KENYA**

AND

**IN THE MATTER OF: PETITION FOR GUARDIANSHIP UNDER
SECTION 26 OF MENTAL HEALTH ACT**

AND

IN THE MATTER OF: THE CIVIL PROCEDURE RULES 2010

AND

IN THE MATTER OF: J A (THE SUBJECT)

AND

ANA.....1ST PETITIONER

JMA.....2ND PETITIONER

SMA.....3RD PETITIONER

JUDGMENT

1. By a Petition dated the 12/5/2021 the petitioners ANA, JMA and SMA seek orders of custody and guardianship of the pension of JA (the ward') and management of his estate pursuant to section 26 of the Mental Health Act (2012).
2. According to 1st the petitioner the Ward is her husband. That in October 2020 the ward was diagnosed with urolithiasis and admitted for treatment and upon surgery he developed neurovisual impairment. That the ward has also been diagnosed with parkinsonism with progressive blindness having developed cogwheel movement in the course of his follow-up which conditions have exacerbated his mental condition and he is unable to carry out ordinary mental activities to make reasonable decision for himself and others. That as a result of his mental impairment the Ward lack capacity to manage his estate and pension.
3. At the hearing of the petition the petitioners together with the children of the Ward TNA, EBA and CGA were present in court. The Ward too was in court. The children of the Ward who are not petitioners had no objection to the orders sought.
4. A medical report dated 5/5/2021 written by Dr. Matiko attached to the petition states that that during the recuperation phase the ward was noted to have cognitive decline with associated color vision impairment and features of parkinsonism. That from the current assessment he is not able to execute some functions that require both short and long term memory as well as fine hand movements.
5. It is evident that the ward is incapable of making his own decisions as he requires physical and mental activities to that extent that he is not capable of performing the same.

6. Section 26 of the Mental Health Act (2012) empowers this court to make an order for custody, management and guardianship. It provides that the court may make orders for the management of the estate of any person suffering from mental disorder and for guardianship of a person suffering from mental disorder by any near relative or by any other suitable person.

7. Section 26 (3) provides that the court may make such order 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 maintains of the family as are dependent upon him for maintenance.

8. In a further affidavit in support of the petition the 1st petitioner has indicated that they have a monthly expenses of 27,000/= for the Ward's treatment and Kshs. 24,500/= for maintenance of 3 children namely TA, EA and CA and that they will need to take a personal medical care for the ward which will cost an average of Kshs. 100,000/=

9. The petitioners have demonstrated sufficiently that the Ward lacks capacity to manage his estate and pension and that there is necessary for an order of custody, guardianship and management to be made to the petitioners. Being the wife, son and daughter of the Ward they qualify as persons under the Act who can be granted custody, guardianship and management of the Ward.

10. I therefore appoint the 3 Petitioners; ANA, JMA and SMA as guardians of the person JA in accordance with the Mental Health Act with powers to make personal decisions for and on his behalf.

11. The petitioners as joint managers of the estate of JA are appointed pursuant to section 27 (i) (a) of the Mental Health Act to operate and withdraw funds held in the account with Absa Bank Kenya, PLC A/C No.[xxxxxxx] KISII Branch for the purposes of catering for the ward's medical bills and maintenance of his dependents. The amount to be limited to Kshs. 60,000/= per month and Kshs. 100,000/= for insurance cover upon its acquisition.

12. The 3 petitioners are also authorized to manage the bank account held by the Ward JA by collecting maintaining and doing all that appertains to the preservation of the same.

13. The petitioner shall file a statement on the use of the monies in the court every 6 months from the date of this judgment until further notice. No order as to costs.

Dated, Signed and Delivered at KISII this 30th day of July 2021.

R.E. OUGO

JUDGE

In the presence of:

Mr. Masinde For the Petitioners

Mr. Orwasa Court Assistant