



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO. E130 OF 2021

IN THE MATTER OF PN

AND

IN THE MATTER OF A PERSON WITH A DISABILITY

AND

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

MNN.....PETITIONER

JUDGMENT

1. Before me is a Petition dated 5th July, 2021 in which the Petitioner invoked **Articles 22, 28 and 43** of the **Constitution**, **sections 2 and 20** of the **Persons with Disabilities Act** and **sections 26-39** of the **Mental Health Act** and sought to be appointed the legal guardian of PN. The Petition is premised on the ground that PN (*hereinafter referred to as the Subject*), who is aged 92 years, suffers from dementia and is therefore incapable of conducting his affairs. That due to the Subject’s medical condition and his advanced age, it is not expected that he will recover sufficiently or undertake any of his previous responsibilities with ability or competence.
2. In the supporting affidavit sworn by the Petitioner on 5th July, 2021, she deposed that she is the wife of the Subject. That following his ailment, the Subject has exhibited intellectual decline, severe physical deterioration and is dependent on her for self-care, medical care and maintenance. She urged that if appointed legal guardian over the Subject’s affairs, she will undertake to faithfully administer according to law, all the estate which by law vests unto her as the legal guardian of the Subject in addition to rendering annual reports accompanied by just and true accounts of the Subject’s estate.
3. Before the Subject became sick and was diagnosed with the current condition, he operated an A/c no. [...] at Equity Bank in which he deposited his savings. The Petitioner stated that due to the Subject’s medical condition, he is continuously under medication and therefore in need of finances to cater for his medical needs. Therefore, that the Petitioner ought to be appointed legal guardian over the Subject to ensure that his right to food, shelter, healthcare services and justice is safeguarded.
4. The Petitioner further deposed that there is pending a suit filed by the Subject, being Nairobi ELC Suit Number 737 of 2012, which touches on family land but that due to the Subject’s medical condition, he is unlikely to remember everything concerning that case a fact she states will greatly prejudice the interests of the family.
5. Annexed to the supporting affidavit is a copy of a History and Physical Examination form dated 5th May, 2021 prepared at the Gatundu Level 5 Hospital and which indicates that the Subject was presented with a history of loss of memory occasioned since March 2019 and on blood pressure medication. The impression was that he was senile and suffering from dementia. The Subject was maintained on the antihypertensive medication and put on the drug known as ceregard. Additionally, he was to undertake a psychiatric review.
6. A medical report dated 23rd July, 2021 prepared by Dr. A. N. Maina, a doctor at the Thika Level 5 Hospital, indicates that the Subject is a geriatric patient who was examined and diagnosed with Brain Atrophy leading to dementia due to age. There is on record a Radiology Examination Report of even date from the Thika Level 5 Hospital which indicates that *pre and post intravenous contrast Serial Axial CT Scans of the Head* were done on the Subject and the conclusion was Brain Atrophy.
7. There is also on record a copy of a letter prepared by the Senior Chief Kimunyu location where the Subject resides indicates that the Subject is married to LWN and MNN, the Petitioner herein. That the Subject however lives with the Petitioner and it is she who cares for him as he is both elderly and sickly.
8. The deceased’s children TWN, EWN and CWN, have by a Consent dated 5th July, 2021 consented to the appointment of the Petitioner as

the legal guardian over the Subject's affairs.

9. After carefully considering the pleadings filed in this matter, and in view of the expert opinion of Dr. A. N. Maina of Thika Level 5 Hospital, I am persuaded that PN, the Subject herein, is a person who is suffering from a mental disorder as envisaged under the provisions of the **Mental Health Act**. He is therefore incapable of taking care of himself and conducting his own affairs. I am also convinced that the Petitioner is fit to be appointed legal guardian over the Subject's affairs.

10. Based on the foregoing, I find that the Petition dated 5th July, 2021 is merited and hereby allow it in the following terms:

- a) PN be and is hereby adjudged to be a person suffering from a mental disorder within the meaning of **section 26** of the **Mental Health Act**, Cap 248 of the Laws of Kenya.
- b) MNN be and is hereby appointed as manager and legal guardian of the Subject namely PN.
- c) There shall be no orders as to Costs.

DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 30TH DAY OF JULY, 2021.

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L. A. ACHODE

HIGH COURT JUDGE