



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERUGOYA**  
**MISC CIVIL CASE NO. E018 OF 2021**  
**IN THE MATTER OF ADMINISTRATION OF THE ESTATE OF INM (A PERSON OF UNSOUND MIND)**  
**AND**  
**IN THE MATTER OF THE MENTAL HEALTH ACT CAP 259 LAWS OF KENYA**

RNI.....1<sup>ST</sup> APPLICANT

PGI.....2<sup>ND</sup> APPLICANT

MWI.....3<sup>RD</sup> APPLICANT

**RULING**

**Brief Facts**

1. By an application dated 23<sup>rd</sup> June 2021 the applicants invoked **Section 26 of the Mental Health Act, Cap 248 Laws of Kenya** and sought the following prayers:-

a. This Honourable Court be pleased to appoint the applicants as guardians of Irungu Ngonyi Muchiri the subject for the purpose of instituting a suit for recovery of L.R MUTIRA/KAGUYU/[...].

2. The application is supported by the affidavit of the first applicant RNI. The applicants describe themselves as adults of sound mind who are wife and children of the subject. The applicants contend that the subject is a mental infirm who was diagnosed with acute schizophrenia in 1990 and used to attend Mathare Mental Hospital for treatment but he later stopped.

3. The subject is the registered owner of L.R. MUTIRA/KAGUYU/[...] and in 2002, some people took advantage of his condition and caused him transfer the said land to one Martin Ndegwa Githinji.

4. The 1<sup>st</sup> applicant states that they came into knowledge that the subject's land was fraudulently transferred when she procured the green card. She is thus apprehensive that the said property will be transferred to another 3<sup>rd</sup> party and thus is desirous of instituting a suit to recover the suit property. She further adds that all the family members have agreed that the applicants be appointed as guardian of the subject in order to institute the land matter.

**Issues for determination**

5. On perusal of the application, there arises 2 main issues for determination:-

a. Whether the applicants have established that the subject suffers from mental disorder pursuant to the Mental Health Act, Cap 248.

b. Whether the applicants should be appointed as guardians to the subject.

**The Law**

**Whether the subject should be declared as suffering from mental disorder pursuant to the Mental Health Act, Cap 248.**

6. **The Mental Health Act** provides for the care of persons who are suffering from mental disorder, custody of their persons and for the management of the estate of such persons.

7. **Section 2** of the Act defines “person suffering from mental disorder” as follows:-

**“person suffering from mental disorder” means a person who has been found to be so suffering under this Act and includes a person diagnosed as psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse.”**

8. **Section 26** provides 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 of the 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.**

9. The treatment notes indicate that the subject is a known psychiatric patient who has defaulted on medication and that he is a schizophrenic. It is evident that the subject suffers from a mental condition and that he was attending psychiatric clinic in 1991 and then stopped for several years. He only resumed treatment in the year 2020. The applicants have an obligation to attach a medical report by a psychiatrist to demonstrate the mental condition of the subject by an expert in an application of this nature. This principle was enunciated in the persuasive case of case of **In the Matter of Gerison Kirima [2009] eKLR** where the court held:-

**“The petitioner while bringing in a petition for orders under section 26 of the Act has to show the court by providing medical reports to substantiate the averment made in the petition. The petitioner, when he comes before the Court, has to show prima facie that the person against whom the orders are sought is a person suffering from mental disorder so as to be incapable of coping the ordinary demands of life and the orders sought is for the welfare of the person concerned.**

**This satisfaction by the court has to be based on the medical reports annexed to the petition. I humbly agree that the court as per the provisions of the Act has no jurisdiction to enter into the arena of dispute so as to assist either party to substantiate their respective claims.”**

10. In my considered opinion, treatment notes are not sufficient proof that the subject is suffering from a mental disorder as per Section 2 of the Mental Act and has a medical condition contemplated under section 26 of the Act. The court is not an expert in that area and will always rely on expert opinion in determining issues based on medical conditions.

**Whether the applicants should be appointed as guardians to the subject.**

11. As noted above, **Section 26 of the Act** gives court the power to make an order regarding management of the estate of any person suffering from mental disorder to any relative or any person suitable but giving preference to a relative.

12. The applicants have stated that they are wife and children of the subject respectively. This is confirmed by a letter from the area chief dated 28/04/2021. Notably, the applicant has indicated that all the family members have consented to the applicants being appointed as guardians of the subject. Also annexed is a letter from the chief indicating the names of the family members. I have perused the said letter and noted that all but one of the children are adults. It would add more weight to this application if affidavits of two other adult children were attached to support this application.

13. However, in the absence of a medical report from a psychiatrist, I find this application not successful. The requirements of the law must be met as provided for under the Mental Health Act.

14. I find the application incompetent and strike it out with costs.

15. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 29<sup>TH</sup> DAY OF JULY, 2021.**

**F. MUCHEMI**

**JUDGE**

**Ruling delivered through video link this 29<sup>th</sup> day of July, 2021**