



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY AND PROBATE DIVISION

MISC. APPLICATION NO. E020 OF 2021

IN THE MATTER OF: SECTIONS 26 AND 28 OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA

AND

IN THE MATTER OF: AN APPLICATION BY EWN FOR THE MANANGEMENT OF THE ESTATE AND GUARDIANSHIP OF JMW

JUDGMENT

1. By a Petition dated 23.2.21 the Petitioner, EWN seeks to be appointed guardian of JMW (the subject), and manager of her estate comprising of:

- a) Stall No. xx at Kenyatta Market.
- b) Shares with BAT Kenya Ltd.
- c) Shares in Kangema Farmlands Ltd.
- d) Plot No. xxxx Kayole
- e) Room No. xxxxx – Jericho Estate

2. The Petitioner states that she is a daughter in law to the subject, whose only son JIN died on 14.2.99. The subject is aged 82 years and has since 2016 been suffering from neuro cognitive degenerative disorder and Alzheimer’s disease. Due to her ailment, the subject has become forgetful, occasioned to loss of memory, confusion and poor judgment and cannot make logical decisions. As a result, her tenants are taking undue advantage of the subject by refusing to pay rent thereby exposing her estate to loss.

3. In a report dated 3.2.21, Dr. Nganga of the Mathari National Teaching and Referral Hospital indicted that the subject was *inter alia* restless and irritable, disoriented in time and place but not person, has auditory and visual hallucinations with poor concentration, poor judgment and no insight. The conclusion was that the subject was most likely suffering from senile dementia - Alzheimer disease and neuro cognitive degenerative disorder. The recommendation was that the subject requires long term care and pharmacology, assistance with basic shores and family support and therapy.

4. The Court has considered the Petition, the supporting affidavits, the exhibited medical report, as well as counsel’s submissions. The Court was also able to observe the subject and confirmed that she was quite disoriented and unable to have a logical conversation.

5. Section 2 of the Mental Health Act provides:

“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 a psychopathic person with mental illness and person suffering from mental impairment due to alcohol of substance abuse;

6. From the material before the Court, it is clear that the subject’s condition has rendered her incapable of managing her own affairs. The Court has made inquiry and makes a finding that subject is a person suffering from mental disorder and incapable of managing her affairs. It is therefore necessary to make orders for the guardianship of the subject and for the management of her estate.

7. The Act empowers the Court to make orders relating to a person suffering from mental disorder. Section 26 provides:

(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) Whereupon 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.

8. The Court may also direct that the property of a person suffering from mental disorder be applied for such person’s maintenance or his family. Section 29(1) of the Act provides:

Where it appears to the court that, having regard to the circumstances of a person who is suffering from mental disorder and of his family and any other relative circumstance, it is expedient that his property should be made available for his or their maintenance it may, instead of appointing a manager or, notwithstanding such appointment, order that the property or the proceeds thereof when realized be paid to such person as the court may think fit, to be applied for such maintenance.

9. The Petitioner exhibited a letter from the Senior Chief, Makadara location confirming that she was married to the subject’s son JIN who is now deceased. I am therefore satisfied that the Petitioner is a fit and proper person to be appointed guardian over the subject and her estate.

10. In view of the Court’s finding that the subject is a person suffering from mental disorder, it is necessary to make orders for the guardianship of the subject and for the management of her estate. Accordingly, it is hereby ordered as follows:

i) EWN is hereby appointed as guardian of JMW for the purpose of managing her estate and for making proper provision for her maintenance.

ii) EWN is hereby authorised to collect rent from the subject’s properties and to deal with all the subject’s properties for the benefit of the subject.

iii) There shall be no order as to costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 6TH DAY OF AUGUST, 2021

M. THANDE

JUDGE

In the presence of: -

..... **for the Petitioner**

..... **Court Assistant**