



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**MISC. APPL. NO. E021 OF 2020**

**IN THE MATTER OF SECTIONS 26, 27, 28 AND 39 OF  
THE MENTAL HEALTH ACT, (CAP. 248) LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE PETITION FOR ORDERS OF CUSTODY,  
MANAGEMENT AND GUARDIANSHIP RELATING TO RWM**

**JNK.....PETITIONER**

**VERSUS**

**RWM.....APPLICANT**

**RULING**

1. I will allow the application dated 22<sup>nd</sup> January 2021.

2. The respondent came before me with this petition dated 19<sup>th</sup> August 2020 seeking that his wife, the applicant, be found to be a person suffering from mental disorder; that he be appointed to be her guardian and manager; and that he be granted special powers to transact on her behalf in Trade Circles Limited, and in all matters mortgage, sale, charge, gift, etc. He produced a medical report from Dr. Okonji dated 27<sup>th</sup> July 2020. I allowed the application.

3. Through the present application dated 22<sup>nd</sup> January 2021 it turns out that there was a divorce proceeding that she had filed at Milimani (**CM Court Divorce Cause No. E1241 of 2020**) against the respondent which was pending, and that there was an outstanding dispute over the management of Trade Circles Limited, and that the applicant had complained to the CID about it. Lastly, the applicant has produced a latest medical report that says she is now physically, psychologically, emotionally and socially stable and has developed very good insight into all her life issues and sources. This is report by Dr. Irene Gathoni dated 20<sup>th</sup> December 2019.

4. Like was observed by the Court of Appeal in **Grace Wanjiru Munyinyi and Another –v- Gedion Waweru Githunguri & 5 Others [2011] eKLR**, it is very serious thing to say of, and concerning a person, that the person is of unsound mind or suffers mental disorder. This is because serious legal consequences do flow from a finding that a person is of unsound mind. In the instant case, because of the orders granted the respondent literally took over the life of the applicant.

5. The respondent's conduct has caused me grave concern. He knew he had a pending divorce cause with the applicant. He knew they had a dispute over Trade Circles Limited. He concealed all that information from the court. If the court had known all that information it would not have allowed the petition (**Republic –v- Commissioner of Police and 2 Others Exparte Jacob Juma [2005] eKLR**). The action by the respondent to file the petition was both fraudulent and malicious.

6. In short, I allow the application and review and set aside the orders that I issued on 22<sup>nd</sup> October 2020. The respondent will pay costs of the application.

**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF OCTOBER 2021.**

**A.O. MUCHELULE**

**JUDGE**