



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

MISC. APPLICATION NO. E169 OF 2021

IN THE MATTER OF SECTIONS 26, 28 AND 38 OF THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA

IN THE MATTER OF GG(W)

AND

IN THE MATTER OF AN APPLICATION OF FLSG TO BE APPOINTED GUARDIAN OVER THE AFFAIRS AND MANAGER OF THE ESTATE OF GG

IN THE MATTER OF GUARDIANSHIP OF GG FLSG.....APPLICANT/ PETITIONER

JUDGMENT

1. Before the Court is the Petition dated **14th September 2021** by which the following order are sought: -

“a. THAT the Ward is hereby adjudged to be a person suffering from a mental disorder under Section 26 of the Mental Health Act Cap 248 of the Laws of Kenya.

b. THAT the Petitioner be hereby appointed as the legal guardian of the Ward.

c. THAT the Petitioner be hereby appointed Manager of the Ward’s estate under Section 28 of Mental Health Act to manage her estate including any such description of moveable or immoveable property, money, debts and legacies, power to execute, sign all deeds and instruments relating to or evidencing the title or right to any property or giving a right to receive any money or goods.

d. THAT the Petitioner shall represent the Ward in Court proceedings.

e. THAT the costs and legal fees of this application be provided for from the Wards estate.”

2. The Petition was supported by the Affidavit of even date sworn by **FLSG**.

3. The Petition was canvassed by way of ‘*vive voce*’ evidence via the online platform.

4. The Applicant told the Court that he lives in **Seychelles**. That he is a nephew to the Subject as his mother and the Subject are sisters. He stated that the Subject who is an elderly woman had previously been living on her own in **Nairobi**. He stated that sometime in **May 2021** the Subject fell ill and was admitted at the **Aga Khan Hospital**.

5. The Petitioner averred that the Subject underwent a delicate operation early this year. That as a result of said surgery the Subject became delirious and disoriented in time and place. That the Subject is no longer able to take care of herself and requires 24 hour nursing care.

6. The Petitioner told the court that he and his mother have had to meet the cost of the Subjects treatment. That he has been travelling to **Kenya** from **Seychelles** in order to see the Subject and to make proper arrangements for her continued care.

7. The Petitioner told the court that the Subject is a widow, her husband having died in the year **2002**. That she has no children. He states that the Subject siblings are also elderly and live in **Australia**. That given their age and distance the Subjects siblings are not in a position to monitor the condition of the Subject and/or to make the necessary arrangements for the care and medical treatments required by the Subject. The Petitioner applies to be appointed as Guardian and Manager of the Subject which will enable him access the Subjects bank accounts, medical insurance and rental income, which can be utilized for her treatment.

8. **PW 2 VG** is the sister to the Subject and mother to the Petitioner. She told the court that she lives in **Seychelles**. That she is aware of and has no objection to the Petition.

9. **PW 3, PAG** and **PW7 KAG** are nephews of the Subject. **PW 4 NG** is an elder brother to the Subject. **PW 5 FJG** and **PW 6 JG** are also brothers to the Subject. All the above reside in **Australia**. They confirm that they all aware of and support the Petition as filed by their nephew/cousin.

10. I have considered this Petition, the Affidavits and Reports filed in court as well as the evidence adduced in the matter. **Section 25** of the **Mental Health Act, Cap 248, Law of Kenya** provides for the circumstances under which a court may make orders for the Guardianship of a Subject (Patient) and the management of their affairs as follow:-

“Order 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 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.” (own emphasis)

11. It is alleged that the Subject is unwell, and is incapable of managing her own affairs. I have perused the Medical Report dated **9th July 2021** prepared by **Dr Alphonse Nabiswa** of the **Aga Khan Hospital**. The report indicates that the Subject was diagnosed with ‘**sub-dural haematoma**’ and ‘**Delirium**’. The doctor indicated that after her operation the Subject was noted to be ‘**confused**’ and exhibited ‘**symptoms of restlessness disorientation and irrelevant speech**’.

12. The medical report further indicated that the Subject has ‘**impaired cognitive function**’ and requires assistance for her activities of daily living. The Petitioner confirms that the Subject is under **24** hour nursing care provided by **Fahari Home Care Services**.

13. I have also perused the annexed **Discharge Summary** issued from the **Aga Khan Hospital** in respect of the Subject. The document confirms that the Subject was admitted in the said medical facility on **4th July 2021** and was discharged on **16th July 2021**.

14. From the medical reports availed to this court, it is clear that the Subject is clearly incapacitated and is certainly not in a position to manage her own affairs. The Subject is said to be disoriented in time and place and as such, I find that she is suffering from a mental illness in terms of the **Mental Health Act**.

15. The Subject is a widow who has no child. Her siblings are equally elderly and live out of the country in **Australia** and **Seychelles**. The Petitioner who is the Subjects nephew has indicated his willingness to be appointed as her Guardian and Manager. Indeed, the Petitioner has already made several trips from **Seychelles** to **Kenya** in order to monitor the condition of her Aunt and to make arrangements for her care.

16. The siblings of the Subject all testified online before the court. They all confirmed their consent to the appointment of the Petitioner as Guardian and Manager.

17. In conclusion therefore I do allow this Petition and make the following orders:-

(1) The Subject is hereby declared to be a person suffering from a Mental disorder under section 26 of the Mental Health Act, Cap 248, Laws of Kenya.

(2) The Petitioner be and is hereby appointed as legal Guardian of the Subject.

(3) The Petitioner be and is hereby appointed as Manager of the Subjects Estate.

(4) The costs of this Petition shall be provided for from the Subjects Estate.

DATED IN NAIROBI THIS 19TH DAY OF NOVEMBER, 2021

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MAUREEN A. ODERO

JUDGE