



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

MISC. CIVIL APPLICATION NO.E001 OF 2021

IN THE MATTER OF AN APPLICATION OF NEXT OF FRIEND GUARDIAN AND MANAGER OF THE AFFAIRS OF THE ESTATE OF “EKK” (A PERSON OF UNSOUND MIND)

AND

IN THE MATTER OF SECTION 26 (I) OF THE MENTAL HEALTH ACT (CAP 248 LAWS OF KENYA)

AND

IN THE MATTER OF ORDER 32 RULE 15 OF CIVIL PROCEDURE RULES 2010

AND

LCR.....APPLICANT

R U L I N G

1. The Applicant herein, **LCR** (hereafter referred to as the Applicant) filed a Notice of Motion dated 1/11/2021 under the Mental Health Act seeking to be appointed as guardian of EKK (a person of unsound mind hereafter referred to as the subject)
2. The Applicant is also seeking to be appointed Manager of all the affairs of the subject.
3. The Application is supported by the Affidavit of the Applicant dated 3/11/2021. It is deposed that the subject was involved in a traffic road accident on 14/8/2018 while he was a passenger in Motor Vehicle Reg. No. KBS 324Q along Kericho-Nakuru Road near Camp David and he suffered severe traumatic brain injury.
4. As a result of the Accident, the subject is not able to take care of himself and is dependent on family members to take care of him.
5. The Applicant annexed a Police Abstract and a Medical Report by Dr. W. Rotich on the condition of the applicant and all family members filed a consent to allow the applicant herein to be appointed guardian of the subject.
6. Section 26 of the Mental Health Act falls under part XII “Judicial powers over persons and Estates of person’s suffering from mental illness”. It provides for the orders a court may make for the management of the estate of any person suffering from mental disorder and for the guardianship of that person by any near relative/any other suitable person. It states as follows;

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."

7. The Mental Health Act under section 27 gives the court the discretion to set the boundaries of the powers a person appointed may exercise.

8. Similarly Order 32 rule 1 to 15 of the Civil Procedure Rules, 2010 provides for procedures applicable to persons with unsound minds.

9. The application herein is brought by the sister of the subject whose concern is to protect the subject's estate from wanton waste resulting from the poor judgment arising out of his illness.

10. The Application dated 1/11/2021 be and is hereby allowed in the following terms:-

i. THAT the Applicant be and is hereby appointed guardian of the subject.

ii. THAT the Applicant be and is hereby appointed manager of the subject and is authorized to handle all the affairs of the subject.

iii. THAT the applicant to pay the costs of this application.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 17TH DAY OF DECEMBER, 2021

A. N. ONGERI

JUDGE