



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NANYUKI**

**PETITION NO 1 OF 2020**

**IN THE MATTER OF JOHN NGOTHO NDEGWA (SUBJECT)**

**CHARLES MWANGI NDEGWA.....PETITIONER**

**R U L I N G**

1. The Petitioner herein, **CHARLES MWANGI NDEGWA**, has sought three main orders in the petition dated 09/12/2019 –

- a. That the Subject of these proceedings, **JOHN NGOTHO NDEGWA**, be adjudged to be a person suffering from a mental disorder under **section 26** of the *Mental Health Act, Cap 248*.
- b. That the Petitioner be appointed as *guardian ad litem* of the said Subject.
- c. That the Petitioner be appointed *guardian ad litem* to the said Subject for purposes of lodging proceedings on his behalf to claim damages arising from personal injuries suffered in a road traffic accident.

The Petition is expressed to be brought under **section 26(1)** and **section 28(1)** of the *Mental Health Act*.

2. The Petitioner is the brother of the Subject. I have read his affidavit sworn in support of the petition and a supplementary affidavit he filed on 04/02/2020 pursuant to an order of the court.

3. I have also read the following supplementary affidavits filed on 12<sup>th</sup> and 27<sup>th</sup> February, 2020 –

- i. 2 affidavits by **STEPHEN NDEGWA NJAMA**, the father of the Subject.
- ii. 2 affidavits by **MONICA MUMBI NDEGWA**, the mother of the Subject.
- iii. 2 affidavits by **ANN WAMBUI NDEGWA**, the only other sibling of the Subject.

4. The following facts emerge from all these affidavits –

- i. The Subject is an adult, but he is without spouse or issue.
- ii. On 22/07/2016 the Subject was involved in a road traffic accident along the Nanyuki/Nyeri highway. He suffered in the accident severe head/brain injuries for which he was hospitalized at *Nanyuki Teaching and Referral Hospital* and *Kenyatta National Hospital* for a long time.
- iii. As a result of the said injuries the Subject is now severely incapacitated both mentally and physically, and is confined to a wheelchair.
- iv. The Subject is thus unable to take care of himself or his affairs as a result of his said mental and physical incapacity.

5. The court had occasion to observe the Subject when he was brought to court on 12/02/2020. Although he was able to answer a few simple introductory questions, it was quite apparent that he cannot take care of himself and his affairs.

6. This court is therefore satisfied that the Subject is suffering from a mental disorder (as a result of the injuries he suffered in the accident) to

such an extent as to be incapable of managing his affairs.

7. I will therefore grant prayers (a) and (b) of the petition as prayed. Prayer (c) is misconceived, in that there are rules under the ***Civil Procedure Rules*** for the filing of suits on behalf of persons under incapacity which ought to be followed. That prayer is hereby refused. Orders accordingly.

**DATED AND SIGNED AT NANYUKI THIS 11<sup>TH</sup> DAY OF MARCH, 2020**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 12<sup>TH</sup> DAY OF MARCH, 2020**