



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**MISC. CAUSE NO. 133 OF 2014**

**IN THE MATTER OF SECTIONS 26, 27 & 27 OF THE MENTAL HEALTH ACT CAP 248 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF JWM (SUBJECT) A PERSON SUFFERING FROM A MENTAL DISORDER**

**BETWEEN**

JNW.....1<sup>ST</sup> PETITIONER

SMW .....2<sup>ND</sup> PETITIONER

FKW.....3<sup>RD</sup> PETITIONER

**VERSUS**

SNM.....1<sup>ST</sup> RESPONDENT

THE RAPHAELITIES, RED HIL PLACE....2<sup>ND</sup> RESPONDENT

**RULING**

1. This matter revolves around one **JWM** a person said to be suffering from schizoaffective disorder due to abuse of alcohol, drugs and other substances.
2. It is apparent that the contestation herein is between the subject’s wife JN and his sister SNM both of whom gave oral testimony.
3. Notable is that when the court directed all named parties appear in court and the subject be available, the Petitioners failed to turn up and to make available the subject.
4. In the petition dated 17<sup>th</sup> July 2014 the 1<sup>st</sup> Petitioner stated that in 2009 she got the Subject to be admitted at the 2<sup>nd</sup> Respondent facility which is a rehabilitation Centre, so that the subject’s mental condition as well his substance dependency syndrome could be managed.
5. Her complaint against the 1<sup>st</sup> Respondent is that sometime in June 2014 the 1<sup>st</sup> Respondent without involving her took the Subject to the rehabilitation Centre where the Subject was detained without her involvement and she was denied access which she urged was contrary to **Section 3, 14 and 16** of the **Mental Health Act**.
6. The Petitioner further stated that the action of the 1<sup>st</sup> Respondent was actuated by improper and ulterior motive and informed by the fact that the Subject inherited several assets from his late father’s estate which the 1<sup>st</sup> Respondent has intentions of misappropriating and misusing to the detriment of the Subject and the family.
7. In a replying affidavit dated 8<sup>th</sup> December, 2016 the 1<sup>st</sup> Respondent takes issue as to why this matter was filed in Nairobi yet all parties reside in Nyeri, secondly why after filing a Misc. Criminal Cause in Nyeri for habeas corpus and being allowed to visit the 2<sup>nd</sup> Respondent’s facility and take a doctor of choice the Petitioner abandoned the cause and filed this petition several miles away.

8. The 1<sup>st</sup> Respondent argues that her action was out of concern for her brother's mental state, in-action on the part of the 1<sup>st</sup> Petitioner and due to the fact that her brother's mental situation had continued to deteriorate. She also questions why the 1<sup>st</sup> Petitioner wants to manage the affairs, and assets of the subject.

9. Further the 1<sup>st</sup> Respondent denies her interest in the assets likely to be inherited from their father's estate by the subject indicating that their mother has a life interest for now and therefore she is not capable of interfering with the same.

10. No recent medical report of the Subject was placed before the court. On record is a report by Dr. M. M. Okonji dated 1<sup>st</sup> July 2014 and one prepared by the 2<sup>nd</sup> Respondent dated 18<sup>th</sup> August 2009. Both indicate that the subject suffers from schizoaffective disorder due to use of alcohol and substance abuse.

11. The 2009 report indicated that the subject had improved after rehabilitation and had overcome his mental instability, inability to focus, his low esteem, and encouraged shared family relations, etc.

12. It appears that the Subject had a relapse and went back to alcohol drinking, drug and abuse of substance an old habit which necessitated admission to the 2<sup>nd</sup> Respondent's facility in 2014. The second report indicates that he had a long history of psychiatric disorder for the reasons above shared.

13. Two things stand out in this case; the Subject's wife and sister do not seem to see eye to eye, yet both admit that the subject needs help to overcome his mental state caused by use of alcohol, abuse of drugs and other substances. Secondly at the center of this is control of what the subject is likely to inherit from his late father's estate.

14. **Section 2 of the Mental Health Act Chapter 248 of the Laws of Kenya** ("The Act") defines "persons suffering from mental disorder to mean

**"A person who has been found to be suffering under this Act and includes a person diagnosed as a psychopathic person with mental impairment due to alcohol or substance abuse."**

15. **Sections 26 (1)(2) & (3)** empowers the court to appoint a guardian and manager of the Estate of a person suffering from mental disorder and who is suffering to such an extent as to be incapable of managing his affair.

16. The question the court has asked in the absence of a recent detailed report from a doctor on the Subject's mental state and whether he is unable to take care of himself or manage his affairs, failure of the Subject being presented before court is whether the court is clothed with adequate material to adjudge the subject as having mental disorder to the extent that he requires someone else to take charge of his life and his affairs?

17. The court ordinary would ground its decision based on evidence placed before it. Before court are old reports indicating that the subject had been rehabilitated, was put on medication and needed family support in order to overcome his condition. Also notable evidence is that there is lack of support from the subject's family who have now turned the court into an arena to fight their wars.

18. Based on paragraphs 16 and 17 above I decline to make the orders being sought for at this point.

19. And in the interest of justice, I direct the parties including the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners, and other siblings of the subject to appear before court for further directions on 16<sup>th</sup> July, 2020.

20. This being a family matter each party will meet their own costs.

**SIGNED DATED and DELIVERED** this 27<sup>th</sup> day of May, 2020.

**ALI-ARONI**

**JUDGE**