



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

MISC. APP. NO. 148 OF 2019

IN THE MATTER OF MENTAL HEALTH ACT, CAP 248, LAWS OF KENYA

AND

IN THE MATTER OF PKI (A PERSON SUFFERING FROM MENTAL DISORDER)

AND

IN THE MATTER OF A PETITION FOR RECEPTION ORDER UNDER SECTION 11)

RWK.....PETITIONER

RULING

1. In a petition dated 22nd August 2019 **RWK** sought to be appointed as guardian of her husband **PKI** (“the Subject”) and manager of his properties on grounds that the subject who is 70 years has for the last 9 years suffered from dementia.
2. In a supporting affidavit the petitioner states that the Subject suffers from severe dementia and as a result she has assumed all his responsibilities including taking care of the Subject and his general upkeep.
3. The Petitioner and the Subject are parents to 3 grown up children;
 - i. **CMK 43 years**
 - ii. **EIK – 42 years &**
 - iii. **JWK – 35 years**

The daughters were present in court and gave their consent to the appointment.

4. In a notarised affidavit dated 27th November, 2019 the couple’s son who lives in the United States supported the application.
5. At the hearing of the matter the court had an opportunity of seeing and observing the Subject and sought for an updated medical report. A report dated 3rd March, 2020 by Dr. John N. Gatere was made available.
6. In the said report the doctor confirmed that he has since 16th August 2006 taken care of the Subject who suffers from severe dementia which is characterised by progress deterioration of cognitive functions, he is not able to carry out any motor activities (apraxia) and cannot recognise items (agnosia) and has no capacity of carrying out executive functions.
7. The doctor’s report gives a picture of a hopeless situation. The court having observed the Subject affirms the condition of the Subject who appears severely incapacitated.

8. Section 26 of the Mental Health Act, Chapter 248 of the Laws of Kenya empowers the court to 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 any other suitable person.”

9. Having considered the facts of this matter and taking into consideration the health condition of the subject and for his wellbeing and that of his estate the court appoints **RWK** as the guardian of the Subject herein **PKI**.

10. The guardian so appointed is equally appointed as the manager of the estate of the Subject with powers to manage, collect, invest and use the necessary funds for the upkeep and medical needs of the Subject.

DATED, SIGNED and DELIVERED at NAIROBI this 30TH DAY OF JULY, 2020.

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ALI-ARONI

JUDGE