



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYAHURURU**

**PETITION NO.3 OF 2020**

**IN THE MATTER OF MENTAL HEALTH ACT (CAP 248) LAWS OF KENYA**

**AND**

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

**1. WWG**

**2. JMG**

**3. MMN**

**4. JKG**

**5. PWG**

**6. LNG-PETITIONERS/APPLICANTS**

**R U L I N G**

This application is dated 24/6/2020 brought by the six applicants:

**1. WWG**

**2. JMG**

**3. MMN**

**4. JKG**

**5. PWG**

**6. LNG,**

It is brought pursuant to Section 26(1)(a)(b), Section 27(1), 28 and 38 of the Mental Health Act Cap.248 Laws of Kenya.

The applicants seek the following orders:

**1. ....spent;**

**2. ....spent;**

**3. That DGK be and is hereby adjourned and declared a person suffering from mental disorder under the Mental Health Act Cap.248 Laws of Kenya;**

**4. That W.W.G. be and is hereby appointed the manager of the estate and guardian of D.G.K. and to actively administer the estate generally.**

The applicants W.W.G. J.M.G. M.M.N. J.K.G. P.W.G. and L.N.G. are all children of the subject except the 2nd applicant who is the wife of the subject. All the applicants filed a consent on 24/6/2020 authorizing W.W.G. to be appointed as the legal guardian of the subject. W.W.G. swore an affidavit on behalf of all the applicants. It is contended that the subject D.G.K. was diagnosed with a degenerative disorder of the brain known as Senile Dementia; that the condition is characterized by decline in intellect, memory and personality leading to functional impairment; that the subject's memory has declined to a point that he is unable to take care of himself and his estate for which he is the sole registered owner; that he is unable to manage the said estate so that some of it has been fraudulently misappropriated and has a boundary dispute and is in danger of being wasted; that that is what has necessitated this application.

The applicant annexed (W.W.G.3) a report prepared by Dr. Lucy Boretor a Psychiatrist at J.M. Kariuki Memorial County Referral Hospital who examined the subject on 11/6/2020 and a letter dated 12/6/2020 from the office of the Chief Murichu Location Ndaragwa confirming that the subject has been sick for a long time.

Dr. Lucy Boretor upon examining the subject concluded, "The client suffers from Senile Dementia which is a condition characterized by declining in intellect, memory and personality leading to functional impairment."

Section 26 of the Mental Health Act provides for the care of persons suffering from mental disorder by their relatives or any suitable person and for management of their estate through a court order.

Section 28 of the Act provides for the petitioning of the court for orders in any matter concerning a subject suffering from mental illness. In this case, it is deponed that part of the subject's estate may be wasted because of a pending boundary dispute if the court does not appoint a guardian to take charge.

Section 26(3) provides as follows:

"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."

The subject was in court and the court observed him and is in agreement with the applicants and is satisfied that the said prayers sought are deserved.

For the above reasons, I grant the prayers sought as follows:

- 1. D.G.K. is hereby declared as a person suffering from mental disorder pursuant to Section 28 of the Mental Health Act;**
- 2. W.W.G. is hereby appointed as the legal guardian to D.G.K. and is hereby appointed to manage and administer the subject's estate generally;**
- 3. No order as to costs.**

**Dated, Signed and Delivered at NYAHURURU this 23rd day of July, 2020.**

.....

**R.P.V. Wendoh**

**JUDGE**

**PRESENT (Virtual)**

**Mr. Gachogo for the applicant**

**Eric – Court Assistant**