



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISII**  
**CORAM: A.K NDUNG'U, J**  
**MISC. CIVIL APPLICATION NO. 42 OF 2020**  
**IN THE MATTER OF AN APPLICATION BY DOO TO BE APPOINTED GUARDIAN**  
**OVER THE AFFAIRS AND MANAGER OF THE ESTATE OF SOM**  
**DOO.....APPLICANT**

**RULING**

1. This ruling relates to the Notice of Motion dated 13.7.2020 brought by DOO (*applicant*) in which he seeks orders;
  - a. Spent
  - b. That the court be pleased to declare that **Mr. SOM of Identity Card No. [xxxx]** is incapable of protecting his interests with regard to his affairs due to mental incapacity under **Mental Health Act Chapter 248 Laws of Kenya**.
  - c. That **DOO** the applicant be appointed as the legal guardian ad Litem of **SOM** to manage his affairs including any such description of moveable property, money, debts and legacies, powers to execute and sue, sign or right to receive any money or goods.
  - d. Costs of this application be in the cause.
2. The application is based on the affidavit of the applicant and on grounds listed on the face of the application as follows;
  - a. That **SOM** was a police officer **PF No. [xxxx]** until he was mentally incapacitated while in duty.
  - b. That the subject **SOM** suffers from mental incapacity that hinders decision making and conduct of his affairs and ensuring his wellbeing.
  - c. That he was confirmed mentally ill by Dr. Jumba a psychiatrist consultant by then attached at Kisii Level 5 Hospital on 27/6/2012 and he is likely to make irrational decisions.
  - d. That the applicant herein is the biological son of the subject who is suffering from mental disorder.
2. That his wife died and left only three children who are alive.
  - a. That he retired due to mental sickness from police force.
  - g. That **SOM** salary is pending unpaid by the National Police Service.
  - h. That currently **SOM** is undergoing treatment at Moi Teaching and Referral Hospital for serious injuries he sustained when he fell down.
  - i. That the family of **SOM** is unable to pay for the hospital bills and medication needed for him.
  - j. That due to mental sickness the applicant's father is incapable of protecting his interests hence necessary to appoint a guardian ad

Litem for him.

k. That the doctors have advised that due to the said condition he is incapable of protecting his interests.

l. The instant application is a cry for restoration of sanity in the administration of justice and in particular, the respect for the Rule of Law, National values and good governance.

m. That the national Police Service in several occasions received complaints from especially the applicant and the family of SOM herein in respect of the unpaid salaries but are reluctant to act as required by the law.

n. That the applicant will not have powers to follow up the unpaid salaries for his father from the National Police Service unless the orders sought is granted.

o. That the applicant undertakes that in the event the orders are made he would render a true account of the management of the property, funds and assets of the sick person.

p. Unless, there is urgent and appropriate intervention by this court the mentally sick person is bound to continue suffering.

q. That this court has no option but to stamp its authority.

3. The gist of the application as gleaned from the grounds and affidavit in support is that SO (*subject*) is a former police officer, police service number [xxxx]. A letter from the area chief indicates that the subject's children are DOO (*the applicant*), SKO and EOM.

4. It is urged that the subject retired from the Police Service due to sickness. One Dr. Jumba did a report on the subject dated 12.6.2012. He observes that the subject has been mentally ill since 2001 when his wife died. He suffered severe depression that resulted in total confusion and neglect of himself.

5. The doctor further observed that the subject had episodes of auditory hallucinations whereby voices could speak to him urging him to do certain things. He was poor in abstract thinking and had poor concentration.

6. At the moment the subject is admitted at Kisii Teaching and Referral Hospital being managed for type 3 of odontoid fracture of the vertebrae.

7. A second more recent psychiatrist report is exhibited, this time signed by Dr. Mtuinda, a Consultant Psychiatrist. The doctor concludes that the subject is confused, has poor memory, poor judgement, having auditory hallucinations and partial insight into his illness.

8. It is sought that invoking **Section 28** of the **Mental Health Act, Cap 248 Laws of Kenya**, the court should allow the management of the subject's estate by the applicant.

9. The two other children of the subject, SKO and EOM have signed an authority letter consent to the applicant to have the authority to take care of the estate of the subject.

10. I have considered the application, the grounds on which it is based and the supporting affidavit and the annexures thereto. Am satisfied that the subject herein is incapable of protecting his interests with regard to his affairs due to mental incapacity and indeed this is a position that has persisted for a considerably long period.

11. It is thus necessary that a legal guardian ad Litem be appointed to manage the affairs of the subject including any such description of moveable and immovable property, money, debts and legacies, powers to execute and sue, sign or right to receive any money or goods.

12. With the result that I allow the Notice of Motion dated 13.7.2020 in terms of prayer 2 and 3 on the following terms;

**1. DOO is appointed legal guardian ad Litem of SOM.**

**2. The appointed guardian shall render to the court quarterly accounts of dealings with the estate of the subject.**

**3. No dealing with the subject's immovable property shall take effect without sanction of the court.**

**4. Costs of the motion be in the cause.**

**Dated and Delivered at Kisii this 3<sup>rd</sup> day of August, 2020.**

**A.K NDUNG'U**

**JUDGE**