



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

PETITION NO. 16 OF 2020

IN THE MATTER OF SECTION 26 TO 39 OF THE MENTAL HEALTH ACT CHAPTER 248 OF THE LAWS OF KENYA AND ALL ENABLING PROVISIONS OF THE LAW

AND

IN THE MATTER OF TWM – THE PATIENT

AND

IN THE MATTER OF JMM and EWM.....PETITIONERS

RULING

1. A Petition is filed by **JMM** and **EWM** (the Petitioners) under the provisions of Sections 26 to 39 of the Mental Health Act Cap. 248. The Petitioners seek orders for them to be appointed as guardians and managers of **TWM**. **TWM** is mother of **JMM** and is the mother-in-laws of **EWM**. The Petitioners seek from this court that they be granted powers/authority to manage their mother's affairs generally and in particular to be granted powers to manage her finances and bank accounts; that they be granted power to sign all documents to take all decisions in relation to a civil case, that is **Gatundu Chief Magistrate's case ELC No 36 of 2019**; that they be granted power to reimburse themselves from the estate of their mother of expenses in the maintenance and support of their mother; and that the Petitioners be empowered to employ professional advisers and pay them from the estate.

2. Those prayers are supported by depositions in the affidavit of **JMM**. He deponed that his mother is aged 80 years and is suffering from mental disorder as defined under the Mental Health Act. **JMM** attached a letter dated 2nd July 2020, written by **Dr. Omondi** from Gatundu level 5 Hospital. The doctor after examining **JMM's** mother noted:

“The above named has been on follow up at our facility for hypertension, osteoarthritis and senile dementia. She is not in her sound mind and her speech is incoherent. Any assistance offered to the bearer of this letter will be appreciated.”

3. **JMM** further deponed that his mother is unable to make rational decisions or attend to her personal hygiene, she is therefore wholly dependent on the petitioners for her every need. **JMM** stated that his mother alongside him and his siblings have been sued in a case in Gatundu Chief Magistrate's Court and because of their mother's mental health status she was unable to comprehend the case or to attend trial.

ANALYSIS AND DETERMINATION

4. The power to appoint a guardian to manage the estate of one suffering from mental health is provided under Section 26 of Cap 248. That section is in the following terms:

26(1) The court may make orders –

a. for 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.

2. Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed

manager of the estate and guardian of any such person.

3. Where upon 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 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.”

5. I have considered the petition before me. My concern with this petition is that it is surrounded by lack sufficient information for the very far reaching orders that the Petitioners seek. The information provided through the affidavit evidence does not suffice for the court to appreciate the well-being or otherwise of the Petitioner’s mother. The Petitioners seek orders to operate their mothers bank account and manage her finances but they fail to provide evidence of such bank accounts and they fail to spell out the finances they seek to manage on their mother’s behalf. In actual fact the only concrete information the Petitioners provided was the case filed against them and their mother before Gatundu Chief Magistrate’s Court. The information provided to the court does not justify the orders sought by the Petitioner. The doctor’s report does not state whether the mother’s impairment is temporary or permanent. A case in point is in re of **J M M (2020) e KLR** as follows:

“12. It follows that for the court to intervene and make guardianship and management orders, the person suffering from mental disorder must be incapable of managing himself or herself, or incapable of managing his or her affairs or both. The court has to be satisfied on inquiry that the person is not capable of managing himself/herself or his or her affairs.”

6. It is because of the above short comings that I will grant Limited orders of management of the estate of the Petitioner’s mother’s estate. Such limitation is statutorily permitted under Section 28 of Cap 248:

(1) The court may, upon application made to it by petition concerning any matter connected with a person suffering from mental disorder or with his estate, make such order, subject to this Part, regarding such application as, in the circumstances of the case, the court may think fit.

7. In conclusion I grant the following orders:

(a) The Petitioners are both appointed guardians and managers of **TWM** which is hereby limited only to them signing documents and making decisions on behalf of **TWM** in respect to the case at Gatundu Chief Magistrate’s Court Environmental and Land Cause No. 36 of 2019.

(b)The order hereof does not extend to the Petitioners managing bank accounts or managing the general affairs of **TWM** or any other act on behalf of **TWM** other than what is authorized by the order above.

SIGNED AND DELIVERED VIRTUALLY THIS 15th DAY OF DECEMBER 2020.

MARY KASANGO

JUDGE

15th December 2020

Before Justice Mary Kasango

C/A - Kevin

Petitioners: - No appearance

For Petitioners: - No appearance

COURT

Ruling virtually delivered in their absence

MARY KASANGO

JUDGE