



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

PETITION 3 OF 2018

MNG.....SUBJECT

VERSUS

SNK.....PETITIONER

RULING

1. By way of a petition dated 4/10/2018, SNK (hereinafter the petitioner) seeks orders;

(i) THAT the petitioner is appointed the guardian and manager of the estate MGN who is suffering from chronic alzheimer's disease and demential and with general power save as the court may limit.

(ii) THAT the petitioner be allowed to manage, operate, run or in any other manner deal with Equity Bank, Account Number [particulars withheld], Gate House, Branch in the name of MGN.

(iii) Costs of this petition be in the cause.

2. The petition is anchored on the petitioner's affidavit sworn on the 4/10/2018 and his supplementary affidavit sworn on 8/2/2019.

3. The gist of the petition is that MNG (the subject) is wife to the petitioner. The subject has been ailing since 2016 and suffering from alzeihmer's disease and dementia.

4. The subject is unable to manage her affairs and requires proper maintenance. The subject has some funds lying at Equity Bank Account Number [particulars withheld], Gate House Branch. The said funds are needed to meet the needs of the subject.

5. Dr. Njau J. W. has made a report which in its conclusion states;

“M is a 52 years old lady who is suffering from a neurological illness which is characterized by a progressive impairment of cognitive function such a memory, judgment, concentration and attention. The condition has no cure and is progressive in nature.

Due to the above sickness I would recommend that a guardian be appointed to help her in her daily endeavours because she is not competent to enter into any contract or agreement between parties or manage her finances nor make a will.”

6. Senior Assistant Chief H.C. Kamau has in his letter dated 3/10/2018 confirmed that the petitioner is the husband to the subject, a fact verified by the marriage certificate annexed to the supporting affidavit and marked “SNKI”.

7. The children of the marriage, namely, KKN, FWN and LMN have signed a consent signifying no objection to the petitioner being appointed guardian and manager of the subject's estate.

8. **Section 26 of the Mental Health Act (Cap 248 Laws of Kenya)** provides;

“26 (1) (a) The court may 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 by any other suitable person.”

Sub Section 3 provides;

“(3) Where upon inquiry it is found that the person to whom the enquiry 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.”

9. On the material before court it is manifestly clear that the subject herein is suffering from mental disorder to such an extent as to be incapable of managing her affairs and orders are necessary for the management of her estate and for her proper maintenance.

10. With the result that the petition herein is wholly successful I allow the petition and make the following orders;

1. SNK is appointed the guardian and manager of the estate of MGN.

2. The appointed guardian/manager shall wield a general power to manage, operate or in any other manner deal with Account Number [particulars withheld] in the name of MGN held at Equity bank, Gate House Branch.

3. Costs of this petition in the cause.

Dated and Signed at Nakuru this 26th day of February, 2019.

A. K. NDUNG’U

JUDGE