



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**PETITION NO.13 OF 2018**

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

**RT next friend of**

**JT.....PETITIONER**

**RULING**

1. Before me is a Chamber Summons dated 26<sup>th</sup> October 2018 seeking the appointment by this court of Petitioner as next friend of JT for purposes of institution of suit on behalf of the said JT.

2. The application was filed with a Supporting Affidavit in which it was deponed by the applicant that JT was assaulted by a person who had refused to pay for the medical expenses incurred arising from the assault. It was also deponed that the said JT is of unsound mind and incapable of instituting court proceedings.

3. Consent upon the filing of the application, this court ordered the filing of a further affidavit with a medical certificate to confirm the medical status of JT, which was filed on 21<sup>st</sup> march 2019, in which Dr. Mathew Loftus of Litein AIC Hospital confirmed that JT was not capable of prosecuting a court case.

4. This application, having been brought under Order 32 Rule 15 of the Civil Procedure Rules 2010, and section 26 (1) and (3), section 27 (2) and section 29 of the Mental Health Act Cap 248, and with the documents filed in support of the same, as well as the submissions of Ms Sitati for the applicant, I find no reason to decline the same.

5. For the avoidance of doubt, section 26 (1) of the Mental Health Act provides as follows:-

***“26 (1) 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 nearer relative or by any other suitable person”.***

6. This court thus has jurisdiction to make the orders sought for the purposes of a brother instituting and prosecuting proceedings on behalf of his brother who is of unstable mind.

7. Consequently, I allow the application and appoint RT the petitioner as next friend of JT for purposes of instituting a suit on his behalf as requested, I make no order as to costs.

**Dated, delivered and signed this 26<sup>th</sup> day of April 2019.**

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**George Dulu**

**JUDGE**