



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS CIVIL CASE 8 OF 2019**

**IN THE MATTER OF GGG (A PERSON OF UNSOUND MIND)**

**MMK.....APPLICANT**

**RULING**

1. The Applicant herein, **MMK**, is the wife of the subject of these proceedings, **GGG** (hereinafter called the **Subject**). She has applied under **section 26** of the **Mental Health Act, Cap 248** for the following orders -

**(i) That the Applicant be appointed the Guardian and Next Friend of the Subject.**

**(ii) That the Applicant be appointed Manager of the affairs of the Subject.**

2. The application is supported by the Applicant's affidavit annexed thereto. The Applicant also swore and filed a supplementary affidavit on 22/05/2019 at the direction of the court.

3. The Applicant and the Subject have been married since 28/12/1985. They have four children, all adults now, as follows -

(i) JFWG

(ii) RGG

(iii) MMG

(iv) GGG1

JFWG and MMG are said to be living in Australia and the United Kingdom respectively, while GGG1 is said to be a student at a school in Nairobi. RGG has given her written consent dated 22/05/2019 for the orders sought. It is annexed to the Applicant's supplementary affidavit aforesaid. She also attended court on 25/07/2019.

4. From the material now before the court, it is apparent that the Subject suffered a heart attack and stroke in August, 2016. The doctors say that he has made good recovery "but is unable to transact his business due to residual effect of the stroke," and that he is still attending clinics in **Nairobi Hospital**.

5. The court had occasion to talk with the Subject on 27/06/2019 and on 25/07/2019. On the first occasion he had appeared confused and would not properly recall the name of his wife, the Applicant. He confused her name with that of one of his daughters. On the second occasion he appeared less confused and appeared to understand and appreciate why he was before the court, and further, that he was not too well.

6. The Subject further stated that his affairs could be placed in the hands of his wife while he recuperates. She was in court with him and he acknowledged her. He also acknowledged his daughter Rita.

7. RGG in addressing the court, stated that she and her three siblings had discussed the issue of their father's health with their mother (the Applicant), and that they had all agreed that the Applicant should handle all his affairs until his health improves.

8. **Part XII** of the Mental Health Act provides for judicial power over persons and estates of persons suffering from mental disorder. More specifically, under **section 26(1) & (3)** of the Act, the court may make orders for the management of the estate of any person suffering from mental disorder, and for the guardianship of any person suffering from mental disorder by any near relative, or by any other suitable person -

**“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 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.....”.**

9. In such a case, 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 make any order as to the custody of the person suffering from mental disorder.

10. The Subject was well groomed when he appeared before the court and was soft-spoken. It was apparent, however, that the stroke he suffered has affected him mentally to such extent that he is incapable of managing his affairs, notwithstanding that he appears capable of managing himself. It is therefore necessary to make an order for the management of his estate.

11. The Subject’s spouse, the Applicant herein, MMK, is eminently suitable to manage the estate of her husband, the Subject herein, pending his recovery. She is so appointed. For that purpose, she is also appointed the Guardian of the Subject. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 6<sup>TH</sup> DAY OF AUGUST 2019**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 8<sup>TH</sup> DAY OF AUGUST 2019**