



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**MISC. APPLICATION NO. 151 OF 2019**

**IN THE MATTER OF SECTION 26 AND 28 (1) OF THE MENTAL HEALTH ACT**

**AND**

**IN THE MATTER OF ORDER 32 RULE 15 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF THE ESTATE OF JMO (SUBJECT**

**ER.....PETITIONER**

**JUDGMENT**

1. The Petitioner herein ER filed the Notice of Motion dated 27.8.2019 seeking orders that the Petitioner be appointed interim legal guardian of the subject pending the hearing and determination of this Petition.
2. The Petitioner is also seeking authority to collect any dues and manage any or all assets belonging to the subject.
3. The Petitioner is further seeking to be granted power to withdraw money from the subject's Bank Account No. 110xxxxxxx at Kenya Commercial Bank (KCB) to cater for her Medical related and other urgent necessary expenses.
4. The Petitioner filed a Petition also dated 27.8.2019 seeking the following prayers:
  - (i) **THAT the Petitioner be appointed Legal Guardian and Manager of the Estate of the Subject.**
  - (ii) **THAT the Petitioner be granted authority to withdraw money from the Subject's Bank account No. 110xxxxxxx to cater for her medical and necessary expenses.**
5. The Petitioner filed two Supporting Affidavit one in Support of the Application and the other in support of the Petition.
6. The Petitioner has deposed that he is the first born son of the subject who is now aged 79 years and suffering from cognitive dysfunction dementia which renders her confused, disoriented and incapable of taking care of herself or attend to her personal affairs.
7. The Petitioner further said in his affidavits that the Subject operates Bank Account No. 110xxxxxxx at KCB where her Pension is deposited and he requires to access the said funds to take care of the Subject.
8. The Consent of the other family members was obtained and also a Doctor's report stating the Subject is suffering from Cognitive Dysfunction which causes progressive loss of memory and disorientation.
9. **Section 2** of the Mental Health Act defines

**"person suffering from mental disorder" as follows" means a person who has been found to be so suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse."**

10. The prayers the Petitioner is seeking in the Notice of Motion are the same as those sought in the Petition dated 27.8.2019.

11. I grant the Petition in the following terms:

**(i) THAT the Subject be and is hereby adjudged a person suffering from Mental disorder under the Mental Health Act.**

**(ii) THAT the Petitioner be and is hereby granted authority to collect any dues and manage any or all assets belonging to the Subject**

**(iii) THAT the Petitioner be and is hereby granted power to withdraw money from the Subject's Bank Account No. 110xxxxxxx at Kenya Commercial Bank to cater for her medical related and other urgent necessary expenses.**

**DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2019.**

**A SENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.**